

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**PEDRO CANELA-RODRIGUEZ,**

**Plaintiff,**

**DECLARATION OF  
MARK J. WEINSTEIN, ESQ.**

**- against -**

**INDEX NO. 09 CIV6588 (JSR)**

**MILBANK REAL ESTATE, and FRIEDA  
RODRIGUEZ,**

**Defendants.**

-----X

I, Mark J. Weinstein, affirm under penalty of perjury as follows:

1. I am of counsel to Cotto & Associates, the firm representing the Defendants in the above-entitled action.

2. This Declaration, the accompanying Memorandum of Law, and Rule 56.1 Statement, together with exhibits, is submitted in Support of Defendants' Summary Judgment Motion.


3. Attached hereto as Exhibit 1 are the relevant pages of the deposition transcript of the Plaintiff, Pedro Canela-Rodriguez, taken January 19, 2010.

4. Attached hereto as Exhibit 2 is a true and correct copy of an Affidavit of Ray Radparvar, employee of Defendants', dated February 15, 2010, with Exhibits A, B, C, D, E, and F, attached thereto.

5. Attached hereto as Exhibit 3 is Plaintiff's Verified Complaint.

6. Attached hereto as Exhibit 4 is Defendant's Answer with Affirmative Defenses.

Dated: Ossining, NY,  
February 15, 2010

  
Mark J. Weinstein

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**CASE NO. 09 CIV 6588**

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**PEDRO CANELA-RODRIGUEZ, Plaintiff**

**-against-**

**MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ, Defendants**

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**DECLARATION OF MARK J. WEINSTEIN, ESQ.**

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Cotto & Associates  
70 Spring Street  
Ossining, New York 10562  
Phone (914) 941-4077  
Fax (914) 941-4082

**Attorneys for Defendants**

# EXHIBIT 1

1 RODRIGUEZ

2 Q. Mr. Rodriguez, would it be fair  
3 to say that based on your complaint, you  
4 started working on November 8, 2007?

5 A. What?

6 Q. Do you believe that you started  
7 to work there on November 8, 2007?

8 A. I don't understand.

9 THE INTERPRETER: Do you want me  
10 to -- let me change the wording a  
11 little, the dialect.

12 MR. COTTO: Okay. Translate it so  
13 he can understand it.

14 (The interpreter complied.)

15 Q. The complaint that your attorney  
16 filed and served against my client indicates  
17 the date, a start date for employment at  
18 Milbank as November 8, 2007.

19 My question to you is, is that  
20 the correct date that you commenced  
21 employment at Milbank?

22 A. More or less. I don't remember  
23 well.

24 Q. Who referred you to work at  
25 Milbank?

1 RODRIGUEZ

2 know what you're asking me.

3 MR. COTTO: I'm going to have this  
4 marked as Defendants' Exhibit B.

5 (A document entitled at-will employment  
6 relationship was marked as Defendants'  
7 Exhibit B for identification, as of this  
8 date.)

9 Q. I'm going to show you,  
10 Mr. Canela Rodriguez, what's been marked as  
11 Defendants' Exhibit B.

12 Is that your signature at the  
13 bottom (indicating)?

14 A. Yes.

15 Q. Once again, do you know what  
16 that document is?

17 A. No, I don't know.

18 Q. Before signing this document,  
19 did Eric or anyone explain it?

20 A. No.

21 Q. Nobody explain to you what that  
22 document is?

23 A. No. Nobody explain.

24 Q. Once again, by the way, do you  
25 recall signing this document? It's dated

1 RODRIGUEZ

2 November 24, 2008.

3 A. Yes. Yes, I remember. That's my  
4 signature, but I don't understand. I don't  
5 know what it is.

6 Q. Do you recall who gave you this  
7 document?

8 A. I think Roy gave it to me.

9 Q. Roy?

10 A. Yes. Something like that.

11 Q. Was it Eric or Frieda Rodriguez  
12 who may have given it to you?

13 A. No.

14 Q. I'm just going to read what this  
15 document states and that you signed.

16 At the top it says at-will  
17 employment relationship.

18 MR. AVSHALUMOV: Again, same  
19 objection. These documents haven't been  
20 properly admitted, so any questions asked  
21 based on this document I'll object to at  
22 the time of trial.

23 Q. Do you know what an at-will  
24 employment relationship is?

25 A. No.

1 RODRIGUEZ

2 What you're telling me is that  
3 Eric indicated he was going to pay you \$714  
4 every fifteen days; is that correct?

5 A. Yes.

6 Q. How many hours a week did Eric  
7 say you had to work for this amount of  
8 money?

9 A. I was working seven days.

10 Q. Again, I'm sorry.

11 My question is what did Eric  
12 tell you about how many hours per week you  
13 were going to work for this amount of  
14 money?

15 A. Well, he told me I had to work a  
16 normal job, five days the schedule was and  
17 that I could start early in the morning,  
18 eight o'clock a.m. until four or five in the  
19 afternoon.

20 Q. Did you sign anything with Eric  
21 indicating that you were going to work these  
22 hours, these days at this pay?

23 A. No.

24 Q. You indicated that Eric was  
25 going to give you a porter to work under

1 RODRIGUEZ

2 time?

3 A. From eight to four or five  
4 o'clock in the afternoon.

5 Q. Okay.

6 A. If the boiler didn't work, you  
7 had to be there.

8 Q. Your normal working hours were  
9 from eight in the morning to either four or  
10 five in the afternoon, correct?

11 MR. AVSHALUMOV: Objection.

12 Objection to form. You're putting words  
13 in his mouth. That's not normal working  
14 hours.

15 MR. COTTO: I'm asking if that was  
16 the normal working hours that he was  
17 informed that he had to work.

18 You can translate that.

19 (The interpreter complied.)

20 A. What regular hours do you mean?

21 Q. In your meeting with Eric before  
22 you started to work there, he indicated to  
23 you that your working hours were from eight  
24 to four or five; is that correct?

25 A. Yes.

1 RODRIGUEZ

2 duties, the days and hours per week that you  
3 had to work?

4 A. It's only that we were going to  
5 work and they were going to pay me every  
6 fifteen days. That my work -- I was going  
7 to do work like a super and I was going to  
8 have a porter, but when Eric left, when Eric  
9 left, things changed.

10 Q. You said that the pay would be  
11 every fifteen days; is that correct?

12 A. Yes.

13 Q. What was the agreed upon pay  
14 that Milbank was going to pay your salary?

15 A. They told me they were going to  
16 pay me every fifteen days and they were  
17 going to give me 714. I was going to receive  
18 a check and then I was working well with him  
19 for three months and from there some other  
20 people, some others after that and they  
21 changed my job.

22 Q. I'm just talking about the  
23 meeting with Eric now. I'm not talking about  
24 -- I'll ask you questions about the other  
25 people you're referring to.

1 RODRIGUEZ

2 your duties going to be?

3 A. Take care of what's necessary  
4 about the building, and in that building  
5 there was a lot of work, a lot of leaks. It  
6 was a lot of work. They were going to send  
7 me to work on these problems.

8 Q. What building did you work out  
9 of for Milbank?

10 A. On both.

11 Q. Can you give me the addresses of  
12 both?

13 A. 2770 and 2780.

14 Q. What's the full address?

15 A. I gave it to him a while ago.

16 Q. Oh, it's the same address?

17 A. Yes.

18 Q. Is that Kingsbridge Terrace?

19 A. Yes.

20 Q. And that was 2780?

21 A. Yes.

22 Q. So you were responsible for both  
23 buildings?

24 A. Yes.

25 Q. And the porters that Eric

1 RODRIGUEZ

2 Q. So the record is clear, you  
3 worked and lived in the same building,  
4 correct?

5 A. 2770 Kingsbridge in both of  
6 them, 2770 and 2780.

7 Q. But you lived at 2770  
8 Kingsbridge?

9 A. Yes. For a year I lived there.

10 Q. Did you pay rent when you lived  
11 there?

12 A. No.

13 Q. Why not?

14 A. Because they didn't request for  
15 me to pay rent. They never asked me to pay  
16 rent. If I would have paid rent, it wouldn't  
17 be enough.

18 Q. Was that the agreement that you  
19 made with Eric when you were hired to work?

20 A. Yes.

21 Q. Did you pay electricity for your  
22 apartment unit?

23 A. No.

24 Q. The phone, did you pay for  
25 that?

1 RODRIGUEZ

2 mentioned that were going to be working with  
3 you, did they work in both buildings?

4 A. Yes, the same. They clean both.

5 Q. What were their jobs? What did  
6 they do?

7 A. Clean.

8 Q. I guess broom clean and mop?

9 A. Yes. Mop, broom, take the  
10 garbage out, clean the outside.

11 Q. As a super, you had to make sure  
12 that they did a good job; is that correct?

13 A. Yes. Yes. I was always there.

14 Q. So you were watching to make  
15 sure they finished the job?

16 A. Yes. That's what I was always  
17 doing.

18 Q. If they did a bad job, what  
19 would you do?

20 A. I would tell them to do it  
21 again.

22 Q. So you were supervising them,  
23 making sure that they were doing a good  
24 job?

25 MR. AVSHALUMOV: Objection to the

1 RODRIGUEZ

2 form of the question. It's being  
3 repetitive. It's been asked and answered  
4 already.

5 Q. You could answer.

6 MR. AVSHALUMOV: Go ahead.

7 You can answer again.

8 A. He's repeating the same thing.

9 Q. So you were supervising these  
10 porters to make sure they did their job  
11 correctly?

12 MR. AVSHALUMOV: The question was  
13 asked and answered.

14 MR. COTTO: Can he answer it  
15 again?

16 MR. AVSHALUMOV: Yes.

17 Q. Is that correct, Mr. Rodriguez?

18 A. Yes, it's correct.

19 Q. Was there anyone else that you  
20 supervised besides the porters?

21 MR. AVSHALUMOV: Objection.

22 A. I don't have time to supervise a  
23 lot of people. I had a lot of work to do.

24 Q. During the time that you worked  
25 for Milbank, who was your immediate

1 RODRIGUEZ

2 A. What was that?

3 Q. Were these rental units?

4 A. Yes. That's what it was,  
5 rentals.

6 MR. COTTO: Off the record.

7 (Whereupon, a discussion was  
8 held off the record.)

9 Q. Did both buildings have  
10 elevators?

11 A. Yes, but they never worked  
12 because they didn't get them fixed.

13 Q. As a super, did you have an  
14 office in either building?

15 A. Yes, where I used to put all my  
16 papers.

17 Q. Where was that office located?

18 A. In the basement.

19 Q. What would be in that office?  
20 What would you have in there?

21 A. The materials that they bring  
22 me, the papers of the building, the work  
23 orders they sent me, the rent. Everything  
24 that I used to do. I used to always save it  
25 there.

1 RODRIGUEZ

2 your attorney, it indicated that you worked  
3 approximately 105 hours or more per week  
4 from the period of November 8, 2007 through  
5 January 5, 2009.

6 Do you understand? Do you agree  
7 with that statement?

8 A. Yes.

9 Q. Could you tell us the hours that  
10 you worked overtime during the week during  
11 the time period stated?

12 A. No. I didn't do that. They made  
13 that hour number. I don't know.

14 Q. Who made what? I don't  
15 understand.

16 A. I'm saying that I -- I didn't  
17 do the count of the time. I don't know.

18 MR. AVSHALUMOV: He's asking you  
19 what hours did you work.

20 THE WITNESS: Like what? Like  
21 what hours?

22 MR. AVSHALUMOV: Like how many  
23 hours a week did you work. From when to  
24 when did you work, how many days?

25 THE WITNESS: I worked seven days.

1 RODRIGUEZ

2 I worked there seven days. They said the  
3 work was twenty-four hours. That's what  
4 they said.

5 Q. My question is this.

6 You testified earlier that you  
7 had a meeting with Eric and the job required  
8 that you work five days per week. Your  
9 complaint states that you worked 105 or more  
10 hours per week.

11 A. Yes, but the thing is, that was  
12 when Eric worked. When Eric left, everything  
13 went bad.

14 Q. Okay.

15 When did you start working 105  
16 hours or more per week with Milbank?

17 A. After Eric left.

18 Q. When was that?

19 A. I don't have no idea because  
20 Eric was only there three months.

21 Q. So you started working there in  
22 November of 2007. You indicated that Eric  
23 was there for three months, so that would be  
24 bring us to February.

25 Would it be fair to say that?

1 RODRIGUEZ

2 A. I don't know exactly if it was  
3 three months. It was more or less three  
4 months. He didn't stay there long.

5 Q. Did you start working overtime  
6 these hours starting in February of 2008 or  
7 March of 2008?

8 A. More or less I think, yes. I  
9 don't have an idea.

10 Q. You never wrote it down,  
11 correct?

12 A. No. I didn't write anything.

13 Q. You never wrote down the  
14 overtime hours you allegedly worked,  
15 correct?

16 A. No, because Roy or Ms. Carmen,  
17 they said they were going to give me a  
18 bonus. They were going to give me something,  
19 but they never gave me anything.

20 Q. When did they tell you they were  
21 going to give you a bonus?

22 A. When they used to go there I  
23 used to tell them that there was a lot of  
24 work. No. No. Don't worry. We're going to  
25 give you something.

1 RODRIGUEZ

2 something. They were going to recognize some  
3 of my work. She told me to speak with them.

4 Q. And this was for overtime work  
5 that you were discussing with her?

6 A. Yes, for overtime.

7 Q. Did you ever present any proof  
8 in writing of these alleged hours that you  
9 worked overtime?

10 A. No.

11 Q. Did you ever present any written  
12 proof in writing to Ray or Carmen of these  
13 hours that you allegedly worked overtime?

14 A. No, because they know. They  
15 didn't tell me they were going to pay the  
16 hours. They were going to pay me for the  
17 work.

18 Q. How did you calculate that you  
19 worked from November 8, 2007 to January 5,  
20 2009 a hundred and five or more hours per  
21 week?

22 A. Because I used to work from six  
23 o'clock in the morning until about eleven or  
24 twelve o'clock sometimes, some days. Some  
25 days they would wake you up at four o'clock

1 RODRIGUEZ

2 Q. The hours that you worked prior  
3 to eight in the morning or after five in the  
4 evening, do you have any proof of that in  
5 writing of those hours that you worked and  
6 what you did in those hours?

7 A. No. I didn't do it.

8 Q. Once again, my question is, how,  
9 if you did not write your overtime hours  
10 down, how did you arrive, how did you  
11 calculate that you worked 105 hours or more  
12 in a week?

13 MR. AVSHALUMOV: Objection. Asked  
14 and answered numerous times, but I'll let  
15 him answer it again.

16 A. I told you already.

17 Q. I'm asking you to repeat it  
18 again.

19 A. You have it written down.

20 Q. Mr. Rodriguez, I'm asking you  
21 the question again.

22 MR. AVSHALUMOV: Say it again.

23 A. I used to start at six o'clock  
24 in the morning. I always got up at six. At  
25 six o'clock, I was out working because the

1 RODRIGUEZ

2 MR. COTTO: Let's mark these.

3 (Disciplinary counseling forms were  
4 marked as Defendants' Exhibits D for  
5 identification, as of this date.)

6 Q. I'm going to show you,  
7 Mr. Canela Rodriguez, what's been marked as  
8 Defendants' Exhibit D. These are a series of  
9 disciplinary counseling forms against you.  
10 Review each one and answer whether you  
11 recall receiving them.

12 A. I don't have any of these  
13 documents. I don't have any of these  
14 documents.

15 Q. You don't recognize any of these  
16 documents?

17 A. No. I don't have none of those  
18 papers. They never gave me any of those. I  
19 signed those for Roy, but he didn't give me  
20 a copy or anything.

21 Q. Do you recall receiving these  
22 disciplinary counseling forms?

23 A. He gave it to me to sign.

24 Q. Did he speak to you about the  
25 complaints from various tenants on these

1 RODRIGUEZ

2 forms?

3 A. I didn't know anything about  
4 that. I never knew anything about that.

5 Q. So you signed something here  
6 that you didn't know about? Is that what  
7 you're saying?

8 A. No. Those papers, I didn't know.

9 Q. You acknowledge your signature  
10 on this form; is that correct?

11 A. Yes.

12 MR. AVSHALUMOV: Which exhibit was  
13 that?

14 MR. COTTO: Exhibit D, the  
15 disciplinary counseling form. It's dated  
16 10/30/08.

17 Let's mark this.

18 (A document entitled employee information  
19 was marked as Defendants' Exhibit E for  
20 identification, as of this date.)

21 Q. I'm going to show you,  
22 Mr. Canela Rodriguez, what's been marked as  
23 Defendants' Exhibit E.

24 Do you recognize this document?

25 A. No. No.

1 RODRIGUEZ

2 individual at Milbank ever tell you about or  
3 complain about the quality of work that you  
4 did in tenants' apartments?

5 A. Nobody ever told me anything.

6 Q. Did you have meetings with  
7 Eric? You indicated there was a Ray or a  
8 Carmen in those meetings.

9 Did these supervisors ever  
10 explain to you that tenants were complaining  
11 about your work?

12 A. No. They just met with me for  
13 work stuff.

14 Q. You stated earlier that you  
15 stopped working at Milbank in January of  
16 2009; is that correct?

17 A. Yes.

18 Q. Why are you no longer working at  
19 Milbank?

20 A. Because they gave me a letter of  
21 retirement. They told me they were going to  
22 give me no more work and that's the only  
23 thing they told me and they gave me a month  
24 to get out of the apartment.

25 Q. Why were they terminating your

# EXHIBIT 2

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**PEDRO CANELA-RODRIGUEZ,**

**Plaintiff,**

**AFFIDAVIT OF**  
**RAY RADPARVAR**

**- against -**

**INDEX NO. 09 CIV6588 (JSR)**

**MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ,**

**Defendants.**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF WESTCHESTER )

Plaintiff, RAY RADPARVAR, being duly sworn, deposes and says:

1. I work as Director of Maintenance and Assistant Property Supervisor for the Defendant, Milbank Real Estate since I was hired in March, 2008.
2. Accordingly, I enforce and implement corporate policy in New York and therefore am fully familiar with the facts and circumstances of this case and have personal knowledge of Plaintiff's job performance and termination.
3. The plaintiff worked at Milbank Real Estate from approximately November 8, 2007 until he was terminated on or about January 2, 2009.
4. Plaintiff was hired a superintendant and was responsible for two (2) of Defendant Milbank's buildings: 2770 and 2780 Kingsbridge Terrace in the Bronx, New York. These buildings were residential.

5. As a superintendant, the plaintiff was in a supervisory capacity and managed employees of the defendant, including at least two (2) porters. Plaintiff made recommendations on the hiring and firing of porters. Plaintiff was given his own office where he maintained records and work orders. Plaintiff typically interfaced with the property manager on personnel and building matters, including emergencies. See Exhibit A. Plaintiff duties also included routine interaction with tenants of the building. See Exhibit A.

6. In addition, plaintiff collaborated with independent contractors that were hired to perform services at the Defendant's buildings, directing them to perform work.

7. As a superintendant, Plaintiff was paid a flat salary of \$500.00 per week. See Exhibit B. Because plaintiff worked forty hours per week, typically from 8:00 a.m to 4:00 p.m., he averaged \$12.50 per hour, well over federal and state minimum wage law. See Exhibit B and Exhibit C. It is Defendant's policy that all superintendants are paid a salary.

8. Plaintiff lived rent free for at least a year at 2770 Kingsbridge Terrace did not pay electricity, and had a company phone free of charge. He lived in a two-bedroom apartment with an estimated rental value of \$1000.00 per month. The value of the electricity and the phone was an estimated \$50.00 per month, for each respectively.

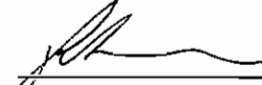
9. Plaintiff signed time sheets demonstrating a five (5) day workweek, without having to work weekends and holidays. See Exhibit C.

10. Plaintiff was hired as an employee at-will by Defendant Milbank. See Exhibit D.

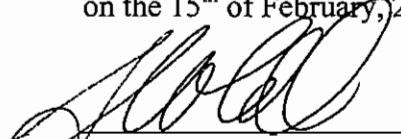
11. Plaintiff committed a series of disciplinary infractions, for which he admitted through his signature. See Exhibit E.


12. These infractions included lack of communication with managers, including not answering the company cell phone, failure to follow directives, insubordination, threats of violence towards managers, foul language towards managers and tenants, and threatening tenants to have wife his come over to their apartment and "beat them up." See Exhibit E.

13. Plaintiff was terminated on January 2, 2009, for cause. See Exhibit F.

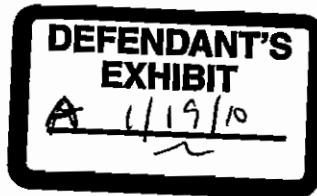
  
\_\_\_\_\_  
Ray Radparvar

Sworn to and subscribed to me  
on the 15<sup>th</sup> of February, 2010

  
\_\_\_\_\_  
Notary Public

  
JOSE WILLIAM COTTO  
Notary Public - State of New York  
No. 050464 0206192866  
Qualifies Westchester  
Commission Expires Sept. 25, 19  
August 28, 2012

# EXHIBIT A



## GENERAL RULES AND REGULATIONS FOR SUPERINTENDENTS

The success of your building depends to a great extent on the care and attention you give it. We are setting forth below a list of general instructions.

- Clean Sidewalks. Mop the main entrance, vestibule and public hall daily. Do not sweep debris into street — put it in a garbage can, or plastic bag.
2. Stairs and halls should be swept daily and mopped at least twice weekly. Woodwork in hall should be cleaned at least once a week.
  3. Keep Basement Clean. Do not permit rubbish, garbage, furniture or debris to accumulate. If you have such an accumulation report this to your Property Manager who will arrange to have a truck pick up and remove same. Keep basement locked and all unauthorized persons out.
  4. Garbage Collections. Instruct tenants to put garbage in proper receptacles. Keep receptacles covered. Remove garbage cans or bags to street on days of sanitation pick-up.
  5. Clean Yards and Airshafts every day. Check roof bulkhead and skylight. Keep roof, hallways and fire escapes free of all obstructions and debris.
  6. Watch Your Lights. See that they are turned on and off at proper times. Replace burnt out bulbs in public area and basement immediately, using at least 60 watt incandescent and 20 watt fluorescent bulbs.
  7. Make minor repairs such as changing fuses, washers, where possible, closing valves to avoid leaks, floods, etc.
  8. All Tenant Move-Out to be reported promptly to Property Manager.
  9. Vacant Apartments are to be cleaned and kept clean at all times. They must be kept securely locked at all times and may be re-entered or used by Superintendent or others. Report any unsealed doors or squatters to Property Manager immediately.
  10. Maintain Heat and Hot Water in Building. If the boiler is not functioning and you cannot make it run, call the Property Manager immediately.
  11. Report any defect in the roof, plumbing, boiler, elevator, electricity, etc., to your Property Manager immediately.
  12. Snow must be removed four hours after the end of snow falling. Use salt and sand on ice.
  13. Report all accidents without delay to your Manager.
  14. Report any Illegal Conduct or misbehavior on the part of any tenant or visitor. If there is evidence of addicts (glassine envelopes, needles, etc.) or other undesirable using the building, call the police and notify the Property Manager.
  15. Be Neat, Polite and Courteous at all times.
  16. In case of emergency during weekend or after 5pm, call emergency number \_\_\_\_\_ or lead Superintendent \_\_\_\_\_. Know your building. Know where to cut off water, gas, electric, etc.. Keep readily available a listing of Police and Fire Dept. telephone numbers as well as those of your superiors. Report on Monday morning to Property Manager any emergencies that occurred on weekend.
  17. \_\_\_\_\_
  18. The apartment herein granted for dwelling and office purposes is incidental to hire.

I have read and understand the Work Rules and Regulations presented in Section 1 through 18 of this document.

\_\_\_\_\_  
 Signature of Superintendent

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Property Manager

\_\_\_\_\_  
 Date

# EXHIBIT B

## PEDRO CANELA RODRIGUEZ

## HOURS WORKED VS HOURS PAID

Pay Period:	Gross Wages (PAID SALARY EXEMPT) Based on Payroll Report	Hours Paid Based on Payroll Report	Average Hourly Wage based on hours paid	Timesheet Signed?
Claim for hours beginning period 11/8/07				
11-1-07 to 11-15-07	1083.32	88	\$12.31	NONE
11-16-07 to 11-30-07	1083.32	88	\$12.31	NONE
12-1-07 to 12-15-07	1083.32	88	\$12.31	NONE
12-16-07 to 12-31-07	1083.32	88	\$12.31	NONE
1-1-08 to 1-12-08	899.99	65	\$13.85	no
1-13-08 to 1-26-08	999.99	80	\$12.50	yes?
1-27-08 to 2-9-08	999.99	80	\$12.50	yes?
2-10-08 to 2-23-08	999.99	80	\$12.50	NONE
2-24-08 to 3-8-08	999.99	80	\$12.50	yes?
3-9-08 to 3-22-08	999.99	80	\$12.50	yes?
3-23-08 to 4-5-08	999.99	80	\$12.50	yes?
4-6-08 to 4-19-08	999.99	80	\$12.50	yes?
4-20-08 to 5-3-08	999.99	80	\$12.50	yes?
5-4-08 to 5-18-08	999.99	80	\$12.50	yes?
5-19-08 to 5-31-08	999.99	80	\$12.50	yes?
6-1-08 to 6-14-08	999.99	80	\$12.50	yes?
6-15-08 to 6-28-08	999.99	80	\$12.50	yes?
6-29-08 to 7-12-08	999.99	80	\$12.50	yes?
7-13-08 to 7-26-08	999.99	80	\$12.50	yes?
7-27-08 to 8-9-08	999.99	80	\$12.50	yes?
8-10-08 to 8-23-08	999.99	80	\$12.50	yes?
8-24-08 to 9-6-08	999.99	80	\$12.50	yes?
9-7-08 to 9-20-08	999.99	80	\$12.50	yes?
9-21-08 to 10-4-08	999.99	80	\$12.50	yes?
10-5-08 to 10-18-08	999.99	80	\$12.50	yes?
10-19-08 to 11-1-08	999.99	80	\$12.50	yes?
11-2-08 to 11-15-08	999.99	80	\$12.50	yes?
11-16-08 to 11-29-08	999.99	80	\$12.50	yes?
11-30-08 to 12-13-08	999.99	80	\$12.50	yes?
12-14-08 to 12-27-08	999.99	80	\$12.50	yes?
12-28-08 to 1-10-09	999.99	80	\$12.50	no
Claim for hours ending period 1/5/09				

Last Day Worked 1/2/09 - Final Pay is \$830.77 Gross

**SUPREME REALTY MANAGEMENT, INC.**  
**Payroll Summary**  
November 1, 2007 through January 5, 2009

	Nov 1 - 10, 07	Nov 11 - 24, 07	Nov 25 - Dec 8, 07	Dec 9 - 22, 07	Dec 23, '07 - Jan 5, 08	Jan 6 - 19, 08	Jan 20 - Feb 2, 08	Feb 3 - 16, 08	Feb 17 - Mar 1, 08
<b>Employee Wages, Taxes and Adjustments</b>									
Gross Pay									
Salary	1,083.32	1,083.32	1,083.32	1,083.32	1,083.32	899.99	999.99	999.99	999.99
Sick Salary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Gross Pay</b>	<b>1,083.32</b>	<b>1,083.32</b>	<b>1,083.32</b>	<b>1,083.32</b>	<b>1,083.32</b>	<b>899.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>
<b>Deductions from Gross Pay</b>									
Child Support-NY	-239.42	-312.00	-239.42	-438.50	-439.15	-370.85	-286.10	-286.10	-286.10
NY Disability 2009	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Deductions from Gross Pay</b>	<b>-239.42</b>	<b>-312.00</b>	<b>-239.42</b>	<b>-438.50</b>	<b>-439.15</b>	<b>-370.85</b>	<b>-286.10</b>	<b>-286.10</b>	<b>-286.10</b>
<b>Adjusted Gross Pay</b>	<b>843.90</b>	<b>771.32</b>	<b>843.90</b>	<b>644.82</b>	<b>644.17</b>	<b>529.14</b>	<b>713.89</b>	<b>713.89</b>	<b>713.89</b>
<b>Taxes Withheld</b>									
Federal Withholding	-88.00	-88.00	-88.00	-88.00	-88.00	-65.00	-80.00	-80.00	-80.00
Medicare Employee	-15.71	-15.71	-15.71	-15.70	-15.71	-13.05	-14.50	-14.50	-14.50
Social Security Employee	-67.17	-67.16	-67.17	-67.17	-67.17	-55.80	-61.99	-62.00	-62.00
NY - Withholding	-33.23	-33.23	-33.23	-33.23	-33.23	-24.77	-30.67	-30.67	-30.67
NY - Disability	-1.30	-1.30	-1.30	-1.30	-0.90	-1.20	-1.20	-1.20	-1.20
<b>Total Taxes Withheld</b>	<b>-205.41</b>	<b>-205.40</b>	<b>-205.41</b>	<b>-205.40</b>	<b>-205.01</b>	<b>-159.82</b>	<b>-188.36</b>	<b>-188.37</b>	<b>-188.37</b>
<b>Additions to Net Pay</b>									
BONUS1	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00
<b>Total Additions to Net Pay</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>100.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Pay</b>	<b>638.49</b>	<b>565.92</b>	<b>638.49</b>	<b>539.42</b>	<b>439.16</b>	<b>369.32</b>	<b>525.53</b>	<b>525.52</b>	<b>525.52</b>
<b>Employer Taxes and Contributions</b>									
Federal Unemployment	0.00	0.00	0.00	0.00	8.67	7.20	8.00	8.00	8.00
Medicare Company	15.71	15.71	15.71	15.70	15.71	13.05	14.50	14.50	14.50
Social Security Company	67.17	67.16	67.17	67.17	67.17	55.80	61.99	62.00	62.00
NY - Disability Company	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NY - Unemployment Company	0.00	0.00	0.00	0.00	44.42	36.90	41.00	40.99	41.00
<b>Total Employer Taxes and Contributions</b>	<b>82.88</b>	<b>82.87</b>	<b>82.88</b>	<b>82.87</b>	<b>135.97</b>	<b>112.95</b>	<b>125.49</b>	<b>125.49</b>	<b>125.50</b>

**SUPREME REALTY MANAGEMENT, INC.**  
**Payroll Summary**  
November 1, 2007 through January 5, 2009

Employee Wages, Taxes and Adjust	Mar 2 - 15, 08	Mar 16 - 29, 08	Mar 30 - Apr 12, 08	Apr 13 - 26, 08	Apr 27 - May 10, 08	May 11 - 24, 08	May 25 - Jun 7, 08	Jun 8 - 21, 08	Jun 22 - Jul 5, 08
<b>Gross Pay</b>									
Salary	999.99	999.99	999.99	999.99	999.99	999.99	999.99	999.99	999.99
Sick Salary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Gross Pay</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>
<b>Deductions from Gross Pay</b>									
Child Support-NY	-286.10	-286.10	-286.10	-286.09	-286.09	-286.09	-286.09	-286.09	-286.09
NY Disability 2009	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83
<b>Total Deductions from Gross Pay</b>	<b>-286.93</b>	<b>-286.93</b>	<b>-286.93</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-286.92</b>
<b>Adjusted Gross Pay</b>	<b>713.06</b>	<b>713.06</b>	<b>713.06</b>	<b>713.07</b>	<b>713.07</b>	<b>713.07</b>	<b>713.07</b>	<b>713.07</b>	<b>713.07</b>
<b>Taxes Withheld</b>									
Federal Withholding	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00
Medicare Employee	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50
Social Security Employee	-62.00	-62.00	-62.00	-62.00	-62.00	-62.00	-62.00	-62.00	-62.00
NY - Withholding	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67
NY - Disability	-1.20	-1.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Taxes Withheld</b>	<b>-188.37</b>	<b>-188.37</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>
<b>Additions to Net Pay</b>									
BONUS1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Additions to Net Pay</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Pay</b>	<b>524.69</b>	<b>524.69</b>	<b>525.89</b>	<b>525.90</b>	<b>525.90</b>	<b>525.90</b>	<b>525.90</b>	<b>525.90</b>	<b>525.90</b>
<b>Employer Taxes and Contributions</b>									
Federal Unemployment	8.00	8.00	0.13	0.00	0.00	0.00	0.00	0.00	0.00
Medicare Company	14.50	14.50	14.50	14.50	14.50	14.50	14.50	14.50	14.50
Social Security Company	62.00	62.00	62.00	62.00	62.00	62.00	62.00	62.00	62.00
NY - Disability Company	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NY - Unemployment Company	41.00	41.00	41.00	21.19	0.00	0.00	0.00	0.00	0.00
<b>Total Employer Taxes and Contribut</b>	<b>125.50</b>	<b>125.50</b>	<b>117.63</b>	<b>97.69</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>

**SUPREME REALTY MANAGEMENT, INC.**  
**Payroll Summary**  
November 1, 2007 through January 5, 2009

Employee Wages, Taxes and Adjust	Jul 6 - 19, 08	Jul 20 - Aug 2, 08	Aug 3 - 16, 08	Aug 17 - 30, 08	Aug 31 - Sep 13, 08	Sep 14 - 27, 08	Sep 28 - Oct 11, 08	Oct 12 - 25, 08	Oct 26 - Nov 8, 08
<b>Gross Pay</b>									
Salary	999.99	999.99	999.99	999.99	799.99	999.99	999.99	999.99	999.99
Sick Salary	0.00	0.00	0.00	0.00	200.00	0.00	0.00	0.00	0.00
<b>Total Gross Pay</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>	<b>999.99</b>
<b>Deductions from Gross Pay</b>									
Child Support-NY	-286.00	-286.09	-286.09	-286.09	-409.00	-409.00	-409.00	-409.00	-409.00
NY Disability 2009	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83	-0.83
<b>Total Deductions from Gross Pay</b>	<b>-286.83</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-286.92</b>	<b>-409.83</b>	<b>-409.83</b>	<b>-409.83</b>	<b>-409.83</b>	<b>-409.83</b>
<b>Adjusted Gross Pay</b>	<b>713.16</b>	<b>713.07</b>	<b>713.07</b>	<b>713.07</b>	<b>590.16</b>	<b>590.16</b>	<b>590.16</b>	<b>590.16</b>	<b>590.16</b>
<b>Taxes Withheld</b>									
Federal Withholding	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00	-80.00
Medicare Employee	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.50	-14.49
Social Security Employee	-62.00	-62.00	-62.00	-62.00	-61.99	-62.00	-62.00	-62.00	-62.00
NY - Withholding	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67	-30.67
NY - Disability	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Taxes Withheld</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.16</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.17</b>	<b>-187.16</b>
<b>Additions to Net Pay</b>									
BONUS1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Additions to Net Pay</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Net Pay</b>	<b>525.99</b>	<b>525.90</b>	<b>525.90</b>	<b>525.90</b>	<b>403.00</b>	<b>402.99</b>	<b>402.99</b>	<b>402.99</b>	<b>403.00</b>
<b>Employer Taxes and Contributions</b>									
Federal Unemployment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Medicare Company	14.50	14.50	14.50	14.50	14.50	14.50	14.50	14.50	14.49
Social Security Company	62.00	62.00	62.00	62.00	61.99	62.00	62.00	62.00	62.00
NY - Disability Company	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NY - Unemployment Company	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Employer Taxes and Contribut</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>	<b>76.49</b>	<b>76.50</b>	<b>76.50</b>	<b>76.50</b>	<b>76.49</b>

**SUPREME REALTY MANAGEMENT, INC.**  
**Payroll Summary**  
November 1, 2007 through January 5, 2009

Employee Wages, Taxes and Adjustments	TOTAL					
	Nov 9 - 22, 08	Nov 23 - Dec 6, 08	Dec 7 - 20, 08	Dec 21, '08 - Jan 3, 09	Jan 4 - 5, 09	Nov 1, '07 - Jan 5, 09
Gross Pay						
Salary	999.99	999.99	899.99	999.99	0.00	31,016.34
Sick Salary	0.00	0.00	100.00	0.00	0.00	300.00
Total Gross Pay	999.99	999.99	999.99	999.99	0.00	31,316.34
Deductions from Gross Pay						
Child Support-NY	-409.00	-409.00	-409.00	-409.00	0.00	-10,297.75
NY Disability 2009	-0.83	-0.83	-0.83	-0.83	0.00	-18.26
Total Deductions from Gross Pay	-409.83	-409.83	-409.83	-409.83	0.00	-10,316.01
Adjusted Gross Pay	590.16	590.16	590.16	590.16	0.00	21,000.33
Taxes Withheld						
Federal Withholding	-80.00	-80.00	-80.00	-80.00	0.00	-2,505.00
Medicare Employee	-14.50	-14.50	-14.50	-14.50	0.00	-454.08
Social Security Employee	-62.00	-62.00	-62.00	-62.00	0.00	-1,941.62
NY - Withholding	-30.67	-30.67	-30.67	-30.67	0.00	-957.67
NY - Disability	0.00	0.00	0.00	0.00	0.00	-13.30
Total Taxes Withheld	-187.17	-187.17	-187.17	-187.17	0.00	-5,871.67
Additions to Net Pay						
BONUS1	0.00	0.00	100.00	0.00	0.00	200.00
Total Additions to Net Pay	0.00	0.00	100.00	0.00	0.00	200.00
Net Pay	402.99	402.99	502.99	402.99	0.00	15,328.66
Employer Taxes and Contributions						
Federal Unemployment	0.00	0.00	0.00	0.00	0.00	56.00
Medicare Company	14.50	14.50	14.50	14.50	0.00	454.08
Social Security Company	62.00	62.00	62.00	62.00	0.00	1,941.62
NY - Disability Company	0.00	0.00	0.00	0.00	0.00	0.00
NY - Unemployment Company	0.00	0.00	0.00	0.00	0.00	348.50
Total Employer Taxes and Contributions	76.50	76.50	76.50	76.50	0.00	2,800.20

# EXHIBIT C

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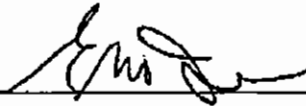
## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: PEDRO C. RODRIGUEZ LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 01/01/2008-01/11/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON						
TUES	OFF				/	
WED	1/2/08	/				
THUR	1/3/08	/				
FRI	1/4/08	/				
SAT	OFF					
SUN	OFF					
MON	1/7/08	/				
TUES	1/8/08	/				
WED	1/9/08	/				
THUR	1/10/08	/				
FRI	1/11/08	/				
SAT	OFF					

Exempt Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Manager or HR Signature:  Date: 1/14/08

**EXEMPT ATTENDANCE SHEET**

EMPLOYEE NAME: PEDRO RODRIGUEZ LAST 4 OF SS: \_\_\_\_\_

PAY-PERIOD ENDING: 01/25/08

*(Put a check in the appropriate column):*

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	01/13/08					
MON	01/14/08	/				
TUES	01/15/08	/				
WED	01/16/08	/				
THUR	01/17/08	/				
FRI	01/18/08	/				
SAT	OFF					
SUN	OFF					
MON	01/21/08	/				
TUES	01/22/08	/				
WED	01/23/08	/				
THUR	01/24/08	/				
FRI	01/25/08	/				
SAT	1/12/08					

Exempt Employee's Signature: Pedro Rodriguez Date: 1/25/08

Manager or HR Signature: [Signature] Date: 1/25/08

*right signature?*

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: PEDRO RODRIGUEZ LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 01/25/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	01/13/08					
MON	01/14/08	/				
TUES	01/15/08	/				
WED	01/16/08	/				
THUR	01/17/08	/				
FRI	01/18/08	/				
SAT	OFF					
SUN	OFF					
MON	01/21/08	/				
TUES	01/22/08	/				
WED	01/23/08	/				
THUR	01/24/08	/				
FRI	01/25/08	/				
SAT	1/26/08					

Exempt Employee's Signature: Pedro Rodriguez Date: 1/25/08Manager or HR Signature: [Signature] Date: 1/25/08

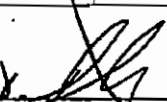
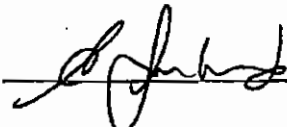
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## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Peter C. Rodriguez LAST 4 OF SS: 4572PAY-PERIOD ENDING: 01/26/08-02/08/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	1/28/08	✓				
TUES	1/29/08	✓				
WED	1/30/08	✓				
THUR	1/31/08	✓				
FRI	2/1/08	✓				
SAT	OFF					
SUN	OFF					
MON	2/4/08	✓				
TUES	2/5/08	✓				
WED	2/6/08	✓				
THUR	2/7/08	✓				
FRI	2/08/08	✓				
SAT	OFF					

Exempt Employee's Signature: Date: 2/11/08Manager or HR Signature: Date: 2/11/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro C. Rodriguez LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 2/24/08 - 3/8/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	2/25	✓				
TUES	2/26	✓				
WED	2/27	✓				
THUR	2/28	✓				
FRI	2/29	✓				
SAT						
SUN		✓				
MON	3/3					
TUES	3/4	✓				
WED	3/5	✓				
THUR	3/6	✓				
FRI	3/7	✓				
SAT						

Exempt Employee's Signature: Pedro Candace Rodriguez Date: 3/10/08Manager or HR Signature: [Signature] Date: 3/10/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: PEDRO RODRIGUEZ LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 3-21-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	<del>9.00</del>					
MON	9.00					
TUES	9.00					
WED	9.00					
THUR	9.00					
FRI	9.00					
SAT	<del>9.00</del>					
SUN	<del>9.00</del>					
MON	9.00					
TUES	9.00					
WED	9.00					
THUR	9.00					
FRI	9.00					
SAT	<del>9.00</del>					

Exempt Employee's Signature: Pedro Canela R. Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 3/21/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING 3/23/08 - 4/5/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	3-23					
MON	3-24	✓				
TUES	3-25	✓				
WED	3-26	✓				
THUR	3-27	✓				
FRI	3-28	✓				
SAT	3-29					
SUN	3-30					
MON	3-31	✓				
TUES	4-1	✓				
WED	4-2	✓				
THUR	4-3	✓				
FRI	4-4	✓				
SAT	4-5					

Exempt Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Manager or HR Signature: [Signature] Date: 4/4/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 4/19/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	4/7	✓				
TUES	4/8	✓				
WED	4/9	✓				
THUR	4/10	✓				
FRI	4/11	✓				
SAT						
SUN						
MON	4/14	✓				
TUES	4/15	✓				
WED	4/16	✓				
THUR	4/17	✓				
FRI	4/18	✓				
SAT						

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 4/18/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 4/20-5/3-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	4/20					
MON	4/21	✓				
TUES	4/22	✓				
WED	4/23	✓				
THUR	4/24	✓				
FRI	4/25	✓				
SAT	4/26					
SUN	4/27					
MON	4/28	✓				
TUES	4/29	✓				
WED	4/30	✓				
THUR	5/1	✓				
FRI	5/2	✓				
SAT	5/3					

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 5/2/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 5-16-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	✓					
TUES	✓					
WED	✓					
THUR	✓					
FRI	✓					
SAT						
SUN						
MON	✓					
TUES	✓					
WED	✓					
THUR	✓					
FRI	✓					
SAT						

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 5/16/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 5/18/08 - 5/31/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON		✓				
TUES		✓				
WED		✓				
THUR		✓				
FRI		✓				
SAT						
SUN						
MON					✓	
TUES		✓				
WED		✓				
THUR		✓				
FRI		✓				
SAT						

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 6/2/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 6/14/2008

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	6/2	✓				
TUES	6/3	✓				
WED	6/4	✓				
THUR	6/5	✓				
FRI	6/6	✓				
SAT						
SUN						
MON	6/9	✓				
TUES	6/10	✓				
WED	6/11	✓				
THUR	6/12	✓				
FRI	6/13	✓				
SAT						

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 6/16/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 6/15/6/28

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	6/15					
MON	6/16	✓				
TUES	6/17	✓				
WED	6/18	✓				
THUR	6/19	✓				
FRI	6/20	✓				
SAT	6/21					
SUN						
MON	6/23	✓				
TUES	6/24	✓				
WED	6/25	✓				
THUR	6/26	✓				
FRI	6/27	✓				
SAT						

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 6/27/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 7-25-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	/					
MON	7/14/08	✓				
TUES	7/15/08	✓				
WED	7/16/08	/				
THUR	7/17/08	/				
FRI	7/18/08	/				
SAT	/					
SUN	/					
MON	7/21/08	✓				
TUES	7/22/08	/				
WED	7/23/08	/				
THUR	7/24/08	/				
FRI	7/25/08	✓				
SAT	/					

Exempt Employee's Signature: Pedro Canela Date: 7/25/08Manager or HR Signature: [Signature] Date: 7/25/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 7-12-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	6/30	✓				
TUES	7/1/08	✓				
WED	7/2/08	✓				
THUR	7/3/08	✓				
FRI	7/4/08				✓	
SAT						
SUN						
MON	7/7/08	✓				
TUES	7/8/08	✓				
WED	7/9/08	✓				
THUR	7/10/08	✓				
FRI	7/11/08	✓				
SAT						


Exempt Employee's Signature: [Signature] Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 7/11/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 8-9-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	<del>7/27/08</del>					
MON	7/28/08	✓				
TUES	7/29/08	✓				
WED	7/30/08	✓				
THUR	7/31/08	✓				
FRI	8/1/08	✓				
SAT	<del>8/2/08</del>					
SUN	<del>8/3/08</del>					
MON	8/4/08	✓				
TUES	8/5/08	✓				
WED	8/6/08	✓				
THUR	8/7/08	✓				
FRI	8/8/08	✓				
SAT	<del>8/9/08</del>					



Exempt Employee's Signature: Pedro canela Date: \_\_\_\_\_Manager or HR Signature:  Date: 8/8/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Euse N Rivera LAST 4 OF SS: 3200PAY-PERIOD ENDING: 8-23-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	8-11-08	✓				
TUES	8-12-08	✓				
WED	8-13-08	✓				
THUR	8-14-08	✓				
FRI	8-15-08	✓				
SAT						
SUN						
MON	8-18-08	✓				
TUES	8-19-08	✓				
WED	8-20-08	✓				
THUR	8-21-08	✓				
FRI	8-22-08	✓				
SAT						

Exempt Employee's Signature:  Date: 8-22-08Manager or HR Signature:  Date: 8/22/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 9-6-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	/					
MON	8/25/08	✓				
TUES	8/26/08	✓				
WED	8/27/08	✓				
THUR	8/28/08	✓				
FRI	8/29/08	✓				
SAT	/					
SUN	/					
MON	9/1/08				✓	
TUES	9/2/08	✓				
WED	9/3/08	✓				
THUR	9/4/08	✓				
FRI	9/5/08	✓				
SAT	/					

Exempt Employee's Signature: Pedro Canela Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 9/5/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro cane/a LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 9-20-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN	9/7/08					
MON	9/8/08	✓				
TUES	9/9/08	✓				
WED	9/10/08	✓				
THUR	9/11/08	✓				
FRI	9/12/08	—				
SAT	9/13/08					
SUN	9/14/08					
MON	9/15/08	✓				
TUES	9/16/08	✓				
WED	9/17/08	✓				
THUR	9/18/08	✓				
FRI	9/19/08	✓				
SAT	9/20/08					

Exempt Employee's Signature: Pedro cane/a.R Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 9/19/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Caneja LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 10/3/08 10/4/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	9/22/08	✓				
TUES	9/23/08	✓				
WED	9/24/08	✓				
THUR	9/25/08	✓				
FRI	9/26/08	✓				
SAT						
SUN						
MON	9/29/08	✓				
TUES	9/30/08	✓				
WED	10/1/08	✓				
THUR	10/2/08	✓				
FRI	10/3/08	✓				
SAT						

Exempt Employee's Signature: [Signature] Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 10-6-08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: PEDRO CANELA LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 10-6-08 to 10-18-08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	10-6	✓				
TUES	10-7	✓				
WED	10-8	✓				
THUR	10-9	✓				
FRI	10-10	✓				
SAT						
SUN						
MON	10-13	✓				
TUES	10-14	✓				
WED	10-15	✓				
THUR	10-16	✓				
FRI	10-17	✓				
SAT						

Exempt Employee's Signature:

Pedro Canela

Date:

10/17/08

Manager or HR Signature:

[Signature]

Date:

10/17/08

Given by Maggie McElarkie

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 10/19/08 - 11/1/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	10.20	✓				
TUES	10.21	✓				
WED	10.22	✓				
THUR	10.23	✓				
FRI	10.24	✓				
SAT						
SUN						
MON	10.27	✓				
TUES	10.28	✓				
WED	10.29	✓				
THUR	10.30	✓				
FRI	10.31	✓				
SAT						

Exempt Employee's Signature: [Signature] Date: 10/31/08Manager or HR Signature: [Signature] Date: 11/2/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela R LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 11-29-09

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	11-17-08	✓				
TUES	11-18	✓				
WED	11-19	✓				
THUR	11-20	✓				
FRI	11-21	✓				
SAT						
SUN						
MON	11-24	✓				
TUES	11-25	✓				
WED	11-26	✓				
THUR	11-27	✓			✓	
FRI	11-28	✓				
SAT						

Exempt Employee's Signature: [Signature] Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 12/01/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canpla LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 12/13/08

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	12/1/08					
TUES	12/2/08					
WED	12/3/08					
THUR	12/4/08					
FRI	12/5/08					
SAT						
SUN						
MON	12/8/08					
TUES	12/9/08					
WED	12/10/08					
THUR	12/11/08					
FRI	12/12/08					
SAT						

Exempt Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Manager or HR Signature: \_\_\_\_\_ Date: 12/15/08

2770-80 Kingsbridge Terr.

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela LAST 4 OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 12/14 - 12/27

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	12/15/08	✓				
TUES	12/16/08	✓				
WED	12/17/08	✓				
THUR	12/18/08	✓				
FRI	12/19/08	✓				
SAT						
SUN						
MON	12/22/08	✓				
TUES	12/23/08	✓				
WED	12/24/08	✓				
THUR	Holiday				✓	Xmas
FRI	12/26/08	✓				
SAT						

Exempt Employee's Signature: [Signature]Date: 12/26/08Manager or HR Signature: [Signature]Date: 12/29/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Caneles Rodriguez LAST + OF SS: \_\_\_\_\_PAY-PERIOD ENDING: 1/10/09

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	12/29	✓				
TUES	12/30	✓				
WED	12/31	✓				
THUR	1/1				✓	
FRI	1/2	✓				
SAT						
SUN						
MON	1/5					
TUES	1/6					
WED	1/7					
THUR	1/8					
FRI	1/9					
SAT						

Exempt Employee's Signature: NA Date: \_\_\_\_\_Manager or HR Signature: [Signature] Date: 1/9/08

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME: Pedro Canela Rodriguez

PAY PERIOD ENDING 1/3/09

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	12/29	✓				
TUES	12/30	✓				
WED	12/31	✓				
THUR	1/1				✓	
FRI	1/2	✓				
SAT						
SUN						
MON						
TUES						
WED						
THUR						
FRI						
SAT						

Exempt Employee's Signature: NA Date: \_\_\_\_\_

Manager or HR Signature: [Signature] Date: 1/5/09

## EXEMPT ATTENDANCE SHEET

EMPLOYEE NAME:

Pedro Canelas Rodriguez

LAST 4 OF SS: \_\_\_\_\_

PAY-PERIOD ENDING:

1/10/09

(Put a check in the appropriate column):

Day	Date	Work	Vacation	Sick	Holiday	Note:
SUN						
MON	12/29	✓				
TUES	12/30	✓				
WED	12/31	✓				
THUR	1/1				✓	
FRI	1/2	✓				
SAT						
SUN						
MON	1/5					
TUES	1/6					
WED	1/7					
THUR	1/8					
FRI	1/9					
SAT						

Exempt Employee's Signature:

NA

Date: \_\_\_\_\_

Manager or HR Signature:

[Signature]

Date:

1/9/08

# EXHIBIT D

**AT-WILL EMPLOYMENT RELATIONSHIP**

As your employer, we certainly hope that we and every employee will find the employment relationship satisfying and rewarding in all respects. At the same time, we recognize that relationships are not always mutually satisfactory.

To protect both parties' rights, it should be remembered that the employment relationship is terminable at-will, at the option of the employee or the employer. Moreover, no one in the organization, other than Aaron Yashouafar and Solyman Yashouafar has the authority or legal ability to modify the at-will nature of the employment relationship. Such modification can only be done if it is done specifically in a written agreement that is signed both by the aforementioned owners and the employee.


The completion of an orientation or probationary period does not affect the at-will nature of our employment relationship.

This represents an integrated agreement with respect to the at-will nature of the employment relationship.

Please sign this notice acknowledging that you have read and understand the at-will nature of our employment relationship.

Employee:

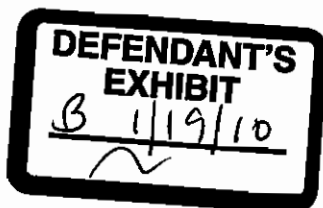
Pedro Canela  
Print Name

 Pedro Canela  
Signature

9/24/08  
Date

By: Human Resources

\_\_\_\_\_



# EXHIBIT E

Scanned  
10/30/08 TR

## DISCIPLINARY COUNSELING FORM

EMPLOYEE NAME: PEDRO CANELA TODAY'S DATE: 10/30/08  
2770-80  
 DEPT/LOCATION: Kingsbridge TERRACE

## REASON FOR COUSELING:

- X ~~W~~ LACK OF COMMUNICATION  
 X WORKS TOO SLOW, LEAVES WORK FOR HELPER.  
 X BE RESPONSIVE TO OFFICE AND TENANTS.

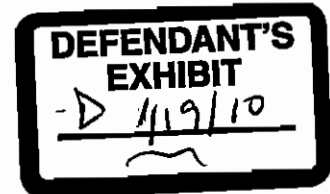
## DETAILS OF SITUATION:

- FAILURE TO COMMUNICATE W/ MRS. WHEN HPD OR OTHER VISITORS SHOW-UP.  
 X FAILURE TO FOLLOW DIRECTIVE - ~~EXE~~ MS. STEWARTS RELOCATION PROJECT. BUILD.  
 • COMPLAINTS FROM TENANTS - NOT RESPONSIVE TO THEIR NEEDS  
 STEPS NEEDED TO TAKE TO IMPROVE/CORRECT SITUATION:

X REPLACE W/ NEW PROACTIVE SUPER

## NEXT ACTION TO BE TAKEN IF NOT CORRECTED:

- ☒ To be determined at management's discretion  
☐ Immediate Termination



## COUNSELING DOCUMENTED:

- ☐ VERBAL ONLY  
☒ COPY OF COUNSELING GIVEN TO EMPLOYEE

- ① employee suggest's that he works with the craftsmen.  
 ② He was offered to get paid for (the Stuart Apt.) by Roy.

MANAGER'S SIGNATURE: Carmen Colon / Maggie Miller

EMPLOYEE'S SIGNATURE: [Signature]  
 (If Applicable)

☐ Employee Refused to Sign \_\_\_\_\_

- ③ Employee states that he helps the employee's (Initials) & the plumber when he comes to the building  
Truelz

FILE

## DISCIPLINARY COUNSELING FORM

EMPLOYEE NAME: PEDRO Canela TODAY'S DATE: 10/30/08DEPT/LOCATION: 2770-80 Kingsbridge TERRACE

## REASON FOR COUSELING:

- X ~~NEW~~ LACK OF COMMUNICATION  
 X WORKS TOO SLOW, LEAVES WORK FOR HELPER.  
 X BE RESPONSIVE TO OFFICE AND TENANTS.

## DETAILS OF SITUATION:

- FAILURE TO COMMUNICATE W/ MGRS. WHEN HPD OR OTHER VISITORS SHOW UP AT BUILDING  
 X FAILURE TO FOLLOW DIRECTIVE - ~~EXE.~~ MS. STEWART'S RELOCATION PROJECT.  
 • COMPLAINTS FROM TENANTS - NOT RESPONSIVE TO THEIR NEEDS  
STEPS NEEDED TO TAKE TO IMPROVE/CORRECT SITUATION:

X REPLACE W/ NEW PROACTIVE SUPER

## NEXT ACTION TO BE TAKEN IF NOT CORRECTED:

- ☐ To be determined at management's discretion  
☐ Immediate Termination

## COUNSELING DOCUMENTED:

- ☐ VERBAL ONLY  
☐ COPY OF COUNSELING GIVEN TO EMPLOYEE

- ① employee suggests that he works with the craftsmen.  
 ② He was offered to get paid for (the Stuart Apt.) by Roy.

MANAGER'S SIGNATURE: Carmen Colon / Maggie MillerEMPLOYEE'S SIGNATURE: [Signature]  
(If Applicable)☐ Employee Refused to Sign \_\_\_\_\_

- ③ Employee states that he helps the employee's (Initials) & the plumber when he comes to the building

**DISCIPLINARY COUNSELING FORM**

EMPLOYEE NAME: Peter Rodriguez TODAY'S DATE: 5-6-08

DEPT/LOCATION: 75 W 190 ST

REASON FOR COUSELING:

☐ **FILE**

X INSUBORDINATION

X ATTITUDE AND FOUL LANGUAGE TOWARD CO-WORKERS AND TENANTS

X THREATS OF VIOLENCE TOWARD MANAGER.

X NOT INFORMING OFFICE OF PARTY IN APT 1H (VACANT) OF WHICH HE WAS  
ACCUSED OF THROWING.

DETAILS OF SITUATION:

X ARE ATTACHED

STEPS NEEDED TO TAKE TO IMPROVE/CORRECT SITUATION:

X ~~DISCIPLINE~~

NEXT ACTION TO BE TAKEN IF NOT CORRECTED:

- ☒ To be determined at management's discretion (RECOMMENDED SUSPENSION 5 DAYS).
- ☐ Immediate Termination

COUNSELING DOCUMENTED:

- ☐ VERBAL ONLY
- ☐ COPY OF COUNSELING GIVEN TO EMPLOYEE

MANAGER'S SIGNATURE: Kay Bruce

EMPLOYEE'S SIGNATURE: refused to sign

(If Applicable)

☐ Employee Refused to Sign

PR  
(Initials)

## INCIDENT REPORT

- ☐ Please keep Confidential on File Only  
☐ Feel free to Share as Reasonably Needed

YOUR NAME: Roy Brice TODAY'S DATE: 5.6.08

COMPANY/LOCATION: 665 PELHAM PARKWAY North

ANY OTHER POTENTIAL WITNESSES: \_\_\_\_\_

DATE (OR DATE RANGE) OF INCIDENT(S): \_\_\_\_\_

## FACTS OF THE INCIDENT(S):

*Please description the physical location, date, time, surroundings and witnesses and all material facts involved.*

TENANTS ~~AND~~ HAD MAKE CALLS AND CONTRACTOR WHO RENOV-  
ATED APT 14 HAD SAID THAT SOMEONE HAD THROW A PARTY  
IN THE NEWLY RENOVATED APT SOME SAY THE SUPER RENTED  
THE APARTMENT OUT FOR A PARTY I KNOW THAT WHEN I GO INTO  
AN EMPTY APT WITH MY WORKERS THE FIRST THING DONE IS  
SECURE ALL WINDOWS BY BOLTING THEM ~~BE~~ SHUT. THERE WAS NO  
OTHER WAY IN EXCEPT THE FRONT DOOR. WHEN I CALLED THE  
SUPER HE SAID THEY MUST HAVE CAME IN THROUGH THE WINDOWS.  
I TOLD EDD & RAY ABOUT THIS AND THEY WERE IN AGREEMENT  
WITH ME TO WRITE HIM UP. THE OFFICE SAYS ITS BEEN OVER A  
WEEK AND PETE HAS STILL NOT INFORMED US.

*(Please attach additional sheet if needed)*

The above stated facts are true and complete to the best of my knowledge. I understand that my request for confidential only applies if governing laws do not prevail.

Roy Brice  
 Signature

5.6.08  
 Date

INCIDENT REPORT

- ☐ Please keep Confidential on File Only  
☐ Feel free to Share as Reasonably Needed

YOUR NAME: Roy Bruce TODAY'S DATE: 5.6.08

COMPANY/LOCATION: 665 PELHAM PARKWAY NORTH

ANY OTHER POTENTIAL WITNESSES: ELIZABETH PEREZ (TENANT)  
ADT, I.C.

DATE (OR DATE RANGE) OF INCIDENT(S): \_\_\_\_\_

FACTS OF THE INCIDENT(S):

*Please description the physical location, date, time, surroundings and witnesses and all material facts involved.*

MORE THAN TWO TENANTS HAVE TOLD ME AND ONE CAME TO  
THE OFFICE AND HAVE TOLD ME THAT THE SUPER (PETE) HAS  
THREATENED TO HAVE HIS WIFE COME TO THERE APTS  
AND BEAT THEM UP. THIS ACCUSATION HAS BEEN MADE  
TO ME BY SEVERAL TENANTS

*(Please attach additional sheet if needed)*

The above stated facts are true and complete to the best of my knowledge. I understand that my request for confidential only applies if governing laws do not prevail.

Roy Bruce  
Signature

5.6.08  
Date

## INCIDENT REPORT

- ☐ Please keep Confidential on File Only  
☐ Feel free to Share as Reasonably Needed

YOUR NAME: Roy Brice TODAY'S DATE: 5.6.08

COMPANY/LOCATION: 665 PELHAM PARKWAY NORTH

ANY OTHER POTENTIAL WITNESSES: ROY RADPARVAR, MARCOS RIVERA.

DATE (OR DATE RANGE) OF INCIDENT(S): 5.5.08

## FACTS OF THE INCIDENT(S):

*Please description the physical location, date, time, surroundings and witnesses and all material facts involved.*

I SAYS TO HIM OKAY YOUR SUSPENDED FOR A MONTH. HE SAYS YOUR NOTHING BUT A POTHEAD MOTHERF--- YOUR AN ASS. I TOLD HIM TO GO TO THE OFFICE. HE SAYS I'M NOT GOING ANY WHERE. F--- YOU. HE THEN APPROACHED ME AS IF TO HIT ME AND SAID YEAH AND WHAT THE F--- YOU GONNA DO ABOUT IT.

*(Please attach additional sheet if needed)*

The above stated facts are true and complete to the best of my knowledge. I understand that my request for confidential only applies if governing laws do not prevail.

Roy Brice  
Signature

5.6.08  
Date



## INCIDENT REPORT

- ☐ Please keep Confidential on File Only  
☐ Feel free to Share as Reasonably Needed

YOUR NAME: Roy Brice TODAY'S DATE: 5.6.08

COMPANY/LOCATION: 665 PELHAM PARKWAY NORTH

ANY OTHER POTENTIAL WITNESSES: RAY RADPARVAR, JOSE MENDEL,  
MARCO RIVERA, AUGUSTIN PEREZ, TENANT IN APT 4F

DATE (OR DATE RANGE) OF INCIDENT(S): 5.4.08

## FACTS OF THE INCIDENT(S):

*Please description the physical location, date, time, surroundings and witnesses and all material facts involved.*

I WAS INSPECTING A JOB (SEC 8) AT 2505 AQUEDUCT AN APT  
4F AND SHOWING RAY WHAT TO LOOK FOR AND HOW TO INSPECT  
CERTAIN JOBS WHEN AUGUSTIN PEREZ MADE A COMMENT  
ABOUT A JOB THAT WAS NOT DONE PROPERLY. HE SAYS "THIS  
JOB IS A ~~SHIT~~ MESSED UP JOB THIS IS HORRIBLE"  
PETE (SUPER) OVERHEARD THE COMMENT AND BEGAN TO CURSE  
AT THE CRAFTSMAN SAYING HEY IF YOU CAN DO A BETTER JOB  
THEN YOU F----- DO IT. COMING OVER HERE WITH THAT MUSLIM  
SH-T GO F----- YOURSELF YOU MOTHER F----- WITH THAT MUSLIM  
SH-T.

*(Please attach additional sheet if needed)*

The above stated facts are true and complete to the best of my knowledge. I understand that my request for confidential only applies if governing laws do not prevail.

Signature

Date

5.6.08



Pedro Canales

NY

## INCIDENT REPORT

- ☐ Please keep Confidential on File Only  
☐ Feel free to Share as Reasonably Needed

FILE

YOUR NAME: Ray Brice TODAY'S DATE: 5.6.08COMPANY/LOCATION: 665 PELHAM PARKWAY NORTHANY OTHER POTENTIAL WITNESSES: RAY RADPARVAR, MARCOS RIVERA.DATE (OR DATE RANGE) OF INCIDENT(S): 5.5.08.

## FACTS OF THE INCIDENT(S):

Please description the physical location, date, time, surroundings and witnesses and all material facts involved.

ON FRIDAY 2.08 AT APPROXIMATELY 4:30 PM I WAS NOTIFIED ABOUT A SEC 8 INSPECTION TO TAKE PLACE AT 75 W 190 APT 1H. I CALLED PETE (SUPER) TO CLEAN OUT APT 1H. HE SAID YES OKAY I'LL DO IT. INSPECTION TOOK PLACE SAT. 3.08 AND DIDNT PASS INSPECTION WHILE HE WAS THERE BECAUSE OF A WINDOW GUARD, BATT FOR SMOKE DETECTOR AND SOME OF THE THINGS LEFT IN THE APT. MON. 5.08 I WENT TO THE APT AND NOTICED THAT NOTHING WAS DONE. RAY AND I WERE DISAPPOINTED AT THE SITE. I CALLED PETE AND TOLD HIM THAT THE NEXT TIME I ASK HIM TO DO A SIMPLE JOB AND HE DOESNT DO IT AFTER SAYING HE WOULD CONSIDER HIMSELF SUSPENDED FOR TWO (2) DAYS. HE DIDNT ANSWER ME BACK ON THE RADIO. 3 MINUTE LATER HE CAME BARGING INTO APT 1H CURSING AT ME AND SCREAMING WHY DONT YOU MAKE IT A WHOLE F----- MONTH YOU MOTHER F-----.

(Please attach additional sheet if needed)

The above stated facts are true and complete to the best of my knowledge. I understand that my request for confidential only applies if governing laws do not prevail.

Ray Brice  
 Signature

5.6.08  
 Date

## EMPLOYEE INFORMATION

Name <u>Pedro Canelas Rodriguez</u>		Effective Date <u>11/5/09</u>	
Department	Job Title <u>Superintendent</u>	Original Date of Hire	Work Location

## NEW HIRE - REHIRE - REINSTATE

New Position (check if applicable)		Replacement Position (check if applicable)		Note the name of ee being replaced in the comment section below		
Work Status  <input type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Intern <input type="checkbox"/> Temporary	Date of Hire	Rate of Pay		Per: Hour/Month/Year		
	Date of Birth	Social Security		(circle one) Exempt Non-Exempt		
	Street Address		City, State, Zip			
	Home Phone		Cell Phone			
Hours Per Week:						

## CHANGE

Type of Change	From	To	\$ Amt of Change	%	Reason for Change
<input type="checkbox"/> Salary					
Date of last pay increase & Amount of Change					Formal Review Done?
<input type="checkbox"/> Commissions					
<input type="checkbox"/> Bonus					
<input type="checkbox"/> Job Title					
<input type="checkbox"/> Department					
<input type="checkbox"/> Work Location					
<input type="checkbox"/> Work Status					
<input type="checkbox"/> Employee Classification					
Personal Information	Address:				Phone Number:



## TEMPORARY LEAVE REQUEST

<input type="checkbox"/> Vacation Leave with Pay	<input type="checkbox"/> Bereavement
<input type="checkbox"/> Sick Leave With Pay	<input type="checkbox"/> Jury Duty
<input type="checkbox"/> Medical/Disability (non work related)	<input type="checkbox"/> Business Trip (paid)
<input type="checkbox"/> Work Injury	<input type="checkbox"/> Leave without Pay
List Dates: From: To:	Total Number of Working Days

## TERMINATION

LAST DAY WORKED: <u>11/2/09</u>	Voluntary <input type="checkbox"/> No Reason Given <input type="checkbox"/> Change in Residence <input type="checkbox"/> To Accept Another Position <input checked="" type="checkbox"/> Unsatisfactory Job Performance <input type="checkbox"/> Final Disciplinary Action <input type="checkbox"/> Layoff <input type="checkbox"/> Other:	CHARACTER OF SERVICE Satisfactory Unsatisfactory Work <input type="checkbox"/> <input checked="" type="checkbox"/> Responsibility <input type="checkbox"/> <input checked="" type="checkbox"/> Conduct <input type="checkbox"/> <input checked="" type="checkbox"/> Ability <input checked="" type="checkbox"/> <input type="checkbox"/> Attendance <input checked="" type="checkbox"/> <input type="checkbox"/>
ELIGIBLE FOR REHIRE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Involuntary (circle one) <input checked="" type="checkbox"/> Request Final Pay	

## ADDITIONAL COMMENTS/INSTRUCTIONS:

Pedro was given opportunities to take ownership of the property. It was decided that his performance was unsatisfactory.

Employee Signature: See - email Date: 11/2/09

Supervisor Signature: [Signature] Date: 11/2/09

Owner Signature: [Signature] Date: 11/2/09

HR Signature: [Signature] Date: 11/2/09

# EXHIBIT F



# Milbank Real Estate

January 13, 2009

Via Overnight Mail

Pedro Canela Rodriguez  
2770 Kingsbridge Terrace, #1B  
Bronx, NY 10463

Re: Termination of Employment  
Date of Termination: 1/2/09

Dear Mr. Canela Rodriguez:

This letter is to confirm the termination of your employment as referenced above.

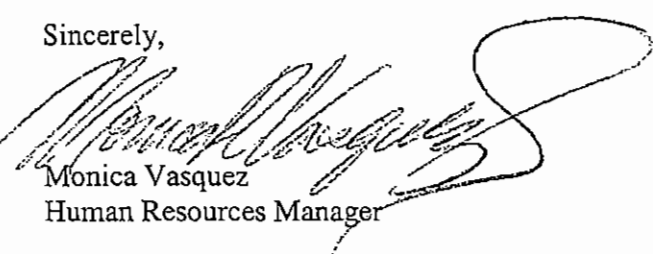
Your final paycheck and The Record of Employment is enclosed. You should take the Record of Employment with you to file for unemployment benefits.

Investments For W2 purposes, please keep us informed of an address change.

Development If you have any questions regarding your final pay or status of your employment, please contact me at your convenience.

Brokerage Sincerely,

Property  
Management

  
Monica Vasquez  
Human Resources Manager

Asset  
Management

Enclosure(s)



660 S. Figueroa

24th Floor

Los Angeles, California

90017-3707

213.403.1400 tel

213.403.1440 fax

www.milbankRE.com



# EXHIBIT 3

%AO 440 (Rev. 8/01) Summons In a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

Pedro Canela-Rodriguez on his own behalf and  
on behalf of others similarly situated

SUMMONS IN A CIVIL ACTION

V.

Milbank Real Estate, and Frieda Rodriguez, an  
individual

CASE NUMBER:

09 CV 6588

JUDGE RAKOFF

TO: (Name and address of Defendant)

Milbank Real Estate  
665 Pelham Pkway North, Suite 102 Bronx, NY 10467  
Frieda Rodriguez  
665 Pelham Pkway North, Suite 102 Bronx, NY 10467  
Milbank Real Estate  
660 S. Figueroa 24th Fl. Los Angeles, Ca 90017

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Helen Dalton and Associates, P.C.  
69-12 Austin St.  
Forest Hills, NY 11375

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

JUL 24 2009

J. MICHAEL McMAHON

CLERK

DATE

(By) DEPUTY CLERK

JUDGE RAKOFF

JS 44C/SDNY  
REV. 1/2008

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

Pedro Canelà-Rodríguez on his own behalf and on the behalf of others similarly situated

## DEFENDANTS

Milbank Real Estate and Frieda Rodriguez, an individual

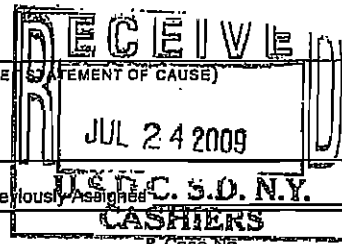
## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Helen Dakon and Associates, P.C. 718.263.9591  
89-12 Austin St. Forest Hills NY 11375

## ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Fair Labor Standards Act

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date

(PLACE AN (x) IN ONE BOX ONLY)

## NATURE OF SUIT

## TORTS

## ACTIONS UNDER STATUTES

## CONTRACT

- ☐ 110 INSURANCE  
☐ 120 MARINE  
☐ 130 MILLER ACT  
☐ 140 NEGOTIABLE INSTRUMENT  
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
☐ 151 MEDICARE ACT  
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL. VETERANS)  
☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS  
☐ 160 STOCKHOLDERS SUITS  
☐ 190 OTHER CONTRACT  
☐ 195 CONTRACT PRODUCT... LIABILITY  
☐ 196 FRANCHISE

## PERSONAL INJURY

- ☐ 310 AIRPLANE  
☐ 315 AIRPLANE PRODUCT LIABILITY  
☐ 320 ASSAULT, LIBEL & SLANDER  
☐ 330 FEDERAL EMPLOYERS' LIABILITY  
☐ 340 MARINE  
☐ 345 MARINE PRODUCT LIABILITY  
☐ 350 MOTOR VEHICLE  
☐ 355 MOTOR VEHICLE PRODUCT LIABILITY  
☐ 360 OTHER PERSONAL INJURY

## PERSONAL INJURY

- ☐ 362 PERSONAL INJURY - MED. MALPRACTICE  
☐ 365 PERSONAL INJURY PRODUCT LIABILITY  
☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY  
☐ 370 OTHER FRAUD  
☐ 371 TRUTH IN LENDING  
☐ 380 OTHER PERSONAL PROPERTY DAMAGE  
☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

## FORFEITURE/PENALTY

- ☐ 810 AGRICULTURE  
☐ 820 OTHER FOOD & DRUG  
☐ 825 DRUG RELATED SEIZURE OF PROPERTY  
☐ 830 LIQUOR LAWS  
☐ 840 RR & TRUCK  
☐ 850 AIRLINE REGS.  
☐ 860 OCCUPATIONAL SAFETY/HEALTH  
☐ 860 OTHER

## BANKRUPTCY

- ☐ 422 APPEAL  
☐ 28 USC 158  
☐ 423 WITHDRAWAL  
☐ 28 USC 157  
☐ 820 COPYRIGHTS  
☐ 830 PATENT  
☐ 840 TRADEMARK

## OTHER STATUTES

- ☐ 400 STATE REAPPORTIONMENT  
☐ 410 ANTITRUST  
☐ 430 BANKS & BANKING  
☐ 460 COMMERCE  
☐ 480 DEPORTATION  
☐ 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)  
☐ 480 CONSUMER CREDIT  
☐ 480 CABLE/SATELLITE TV  
☐ 810 SELECTIVE SERVICE  
☐ 850 SECURITIES/COMMODITIES/EXCHANGE  
☐ 875 CUSTOMER CHALLENGE  
☐ 12 USC 3410  
☐ 1800 OTHER STATUTORY ACTIONS  
☐ 1891 AGRICULTURAL ACTS  
☐ 1892 ECONOMIC STABILIZATION ACT  
☐ 1893 ENVIRONMENTAL MATTERS  
☐ 1894 ENERGY ALLOCATION ACT  
☐ 1895 FREEDOM OF INFORMATION ACT  
☐ 1900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE  
☐ 1950 CONSTITUTIONALITY OF STATE STATUTES

## REAL PROPERTY

- ☐ 210 LAND CONDEMNATION  
☐ 220 FORECLOSURE  
☐ 230 RENT LEASE & EJECTMENT  
☐ 240 TORTS TO LAND  
☐ 245 TORT PRODUCT LIABILITY  
☐ 290 ALL OTHER REAL PROPERTY

## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

- ☐ 441 VOTING  
☐ 442 EMPLOYMENT  
☐ 443 HOUSING/ACCOMMODATIONS  
☐ 444 WELFARE  
☐ 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
☐ 448 AMERICANS WITH DISABILITIES - OTHER  
☐ 440 OTHER CIVIL RIGHTS

## PRISONER PETITIONS

- ☐ 510 MOTIONS TO VACATE SENTENCE  
☐ 28 USC 2255  
☐ 630 HABEAS CORPUS  
☐ 535 DEATH PENALTY  
☐ 540 MANDAMUS & OTHER  
☐ 550 CIVIL RIGHTS  
☐ 555 PRISON CONDITION

## LABOR

- ☒ 710 FAIR LABOR STANDARDS ACT  
☐ 720 LABOR/MGMT. RELATIONS  
☐ 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT  
☐ 740 RAILWAY LABOR ACT  
☐ 760 OTHER LABOR LITIGATION  
☐ 791 EMPL. RET. INC. SECURITY ACT

## IMMIGRATION

- ☐ 482 NATURALIZATION APPLICATION  
☐ 483 HABEAS CORPUS - ALIEN DETAINEE  
☐ 485 OTHER IMMIGRATION ACTIONS

## SOCIAL SECURITY

- ☐ 861 HIA (1395(f))  
☐ 862 BLACK LUNG (823)  
☐ 863 DIWC/DIWW (405(g))  
☐ 864 SSD TITLE XVI  
☐ 865 RSI (405(g))

## FEDERAL TAX SUITS

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)  
☐ 871 IRS-THIRD PARTY  
☐ 26 USC 7809

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ 150,000.00 OTHER

JUDGE

DOCKET NUMBER

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1322, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [ ] DEF [ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF [ ] DEF [ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF [ ] DEF [ ]
CITIZEN OF ANOTHER STATE	[ ] [ ]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] [ ]	FOREIGN NATION	[ ] [ ]

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Pedro Canela-Rodriguez  
411 W. 128th St. Apt. 22  
New York, NY 10027

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Milbank Real Estate and Frieda Rodriguez  
665 Pelham Pkway North  
Bronx, New York 10467

Milbank Real Estate  
660 S. Figueroa 24th Fl.  
Los Angeles, Ca 90017

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN  
(DO NOT check either box if this a PRISONER PETITION.)

DATE 2/6/09 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO  
☒ YES (DATE ADMITTED Mo. 07 Yr. 2007)  
 Attorney Bar Code # RA5508

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ Is so Designated.

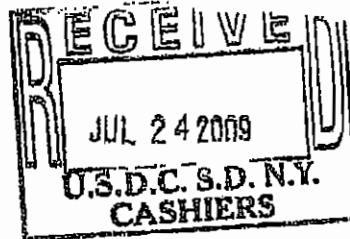
J. Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE RAKOFF

09 CV 6588

Helen F. Dalton & Associates, PC  
Roman Avshalumov (RA5508)  
69-12 Austin Street  
Forest Hills, NY 11375  
Telephone: 718-263-9591



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PEDRO CANELA-RODRIGUEZ, on his own behalf  
and on the behalf of others similarly situated.

Plaintiff,

COMPLAINT

-against-

JURY TRIAL  
DEMANDED

MILBANK REAL ESTATE, and  
FRIEDA RODRIGUEZ an individual,

Defendants.

-----X

1. Plaintiffs, PEDRO CANELA-RODRIGUEZ (hereinafter referred to as "Plaintiff"), by his attorneys at Helen F. Dalton & Associates, PC, allege, upon personal knowledge as to himself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

2. Plaintiff, PEDRO CANELA-RODRIGUEZ through undersigned counsel, brings this action against MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ an individual (collectively, "Defendants"), to recover damages for egregious violations of federal and state minimum wage and overtime laws arising out of Plaintiff's employment at MILBANK REAL ESTATE located at 665 Pelham Pkway North, Bronx, NY 10467.
3. Plaintiff PEDRO CANELA-RODRIGUEZ was employed by Defendants to work as Maintenance at one of the buildings managed by MILBANK REAL ESTATE from approximately November 8<sup>th</sup>, 2007 until his employment was

terminated on January 5<sup>th</sup>, 2009. Although Plaintiff PEDRO CANELA-RODRIGUEZ worked approximately one hundred and five (105) hours or more per week during the period of November 8<sup>th</sup>, 2007 through January 5<sup>th</sup>, 2009, Defendants did not pay Plaintiff time and a half (1.5) for hours worked over forty (40), a blatant violation of the overtime provisions contained in the Fair Labor Standards Act ("FLSA") and New York Labor Law.

4. As a result of these violations of Federal and New York State labor laws, Plaintiff seeks compensatory damages and liquidated damages in an amount exceeding \$100,000. Plaintiff also seeks interest, attorney's fees, costs, and all other legal and equitable remedies this Court deems appropriate.

#### JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the FLSA, 29 U.S.C. §216 and 28 U.S.C. §1331.
6. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.
7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.
8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201 & 2202.

#### THE PARTIES

9. Plaintiff, PEDRO CANELA RODRIGUEZ, resides at 411 W. 128<sup>th</sup> St. Apt. 22, in New York County, New York and was employed by Defendants at MILBANK REAL ESTATE in New York, New York from on or about November 8<sup>th</sup>, 2007 until January 5<sup>th</sup>, 2009.
10. Upon information and belief, Defendants, MILBANK REAL ESTATE is a corporation organized under the laws of New York with a principal executive office at 660 S. Figueroa 24<sup>th</sup> Fl. Los Angeles, California 90017.

11. Upon information and belief, Defendants, MILBANK REAL ESTATE is a corporation authorized to do business under the laws of New York.
12. Upon information and belief, Defendant FRIEDA RODRIGUEZ, owns and/or operates MILBANK REAL ESTATE that does business under the name "MILBANK REAL ESTATE" at 665 Pelham Pkway North, Bronx, NY 10467.
13. Upon information and belief, Defendant Defendants FRIEDA RODRIGUEZ, is the Chairman of the Board of MILBANK REAL ESTATE.
14. Upon information and belief, Defendant FRIEDA RODRIGUEZ, is the Chief Executive Officer of MILBANK REAL ESTATE.
15. Upon information and belief, Defendant FRIEDA RODRIGUEZ, is an agent of MILBANK REAL ESTATE.
16. Upon information and belief, Defendant FRIEDA RODRIGUEZ, has power over personnel decisions.
17. Upon information and belief, Defendant FRIEDA RODRIGUEZ, has power over payroll decisions.
18. Defendant FRIEDA RODRIGUEZ has the power to hire and fire employees at the MILBANK REAL ESTATE establish and pay their wages, set their work schedule, and maintains their employment records.
19. During relevant times, Defendant FRIEDA RODRIGUEZ, was Plaintiff's employer within the meaning of the FLSA and New York Labor Law.
20. On information and belief, MILBANK REAL ESTATE is at present and has been at all times relevant to the allegation in the complaint, an enterprise engaged in interstate commerce within the meaning of the FLSA in that the entity (i) has had employees engaged in commerce or in the production of goods for commerce, and handle, sell or otherwise work on goods or material that have been moved in or produced for commerce by any person; and (ii) has had an annual gross volume of sales of not less than \$500,000.

STATEMENT OF FACTS

21. Plaintiff, PEDRO CANELA RODRIGUEZ, was employed by Defendants at the MILBANK REAL ESTATE in Bronx, New York, between approximately November 8<sup>th</sup>, 2007 – January 5<sup>th</sup>, 2009.
22. During his employment by Defendants at MILBANK REAL ESTATE Plaintiff's primary duties were working installing kitchens, bathrooms and floors and performing other miscellaneous duties as directed by supervisors and managers.
23. Defendants usually created work schedule, requiring Plaintiff Pedro Canela Rodriguez to work well more than forty (40) hours per week.
24. Plaintiff, PEDRO CANELA-RODRIGUEZ, was employed by Defendants to work installing kitchens, bathrooms, and floors, between approximately November 8<sup>th</sup>, 2007 until his employment was terminated on January 5<sup>th</sup>, 2009. Although Plaintiff worked approximately one hundred and five (105) hours or more per week during the period of November of 2007 through January of 2009, Defendants did not pay Plaintiff time and a half (1.5) for hours worked over forty (40), a blatant violation of the overtime provisions contained in the Fair Labor Standards Act ("FLSA") and New York Labor Law.
25. In fact, the schedule created by Defendants required Plaintiff to work approximately one hundred and five (105) hours per week.
26. Despite the long hours that Plaintiff PEDRO CANELA-RODRIGUEZ worked for Defendants, Defendants did not pay Plaintiff the required minimum wage from November 8<sup>th</sup>, 2007 to January 5<sup>th</sup>, 2009.
27. At all relevant times, both Federal and New York State law have required Defendants to pay Plaintiff overtime wages at a wage rate of one and a half (1.5) times his regular rate for hours worked in excess of forty (40) hours per week.
28. During many or all weeks in which Plaintiff PEDRO CANELA-RODRIGUEZ was employed by Defendants, Plaintiff worked in excess of forty (40) hours per week.

29. Defendants did not pay Plaintiff PEDRO CANELA-RODRIGUEZ for his services and labor at a rate that is one and a half (1.5) times the minimum wage, the minimum regular rate of pay to which Plaintiff is entitled for all hours worked over forty (40) in a workweek.
30. At all relevant times, the FLSA, 29 U. S. C. §206 has required Defendants to pay Plaintiff a minimum wage of \$5.15 per hour.
31. At all times, the New York Minimum Wage Act, New York Labor Law §652 had required Defendants to pay Plaintiff minimum wages of \$7.15 an hour.
32. Defendants willfully failed to post notices of the minimum wage and overtime wage requirements in a conspicuous place at the restaurant as required by both NYLL and the FLSA.
33. Upon information and belief, Defendants willfully failed to keep payroll records as required by both NYLL and the FLSA.
34. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff an additional hour of pay at a minimum wage for each day worked more than ten (10) hours, in violation of the New York Minimum Wage Act.

#### **FIRST CAUSE OF ACTION**

##### **Minimum Wages Under The Fair Labor Standards Act**

35. Plaintiff re-alleges and incorporated by reference all allegations in all preceding paragraphs.
36. Plaintiff has consented in writing to be a party to this action, pursuant to 29 U.S.C. §216(b).
37. At all times relevant to this action, Plaintiff was engaged in commerce or the production of services and goods for commerce within the meaning of 29 U.S.C. §§206(a) and 207(a).
38. At all times relevant to this action, Defendants were employers engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §§206(a) and 207(a).
39. Defendants willfully failed to pay Plaintiff(s) minimum wage in accordance with 29 U.S.C. §§201, 202 and 203.

40. Defendants' violations of the FLSA, as described in this Complaint have been willful and intentional. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff.
41. Due to Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, his unpaid minimum wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action including interest, pursuant to the FLSA, specifically 29 U.S.C. §216(b).

### **SECOND CAUSE OF ACTION**

#### **Minimum Wages Under New York Labor Law**

42. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
43. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§2 and 651.
44. At all times relevant to this action, Defendants were employers within the meaning of New York Labor Law.
45. Defendants failed to record, credit or compensate Plaintiff the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, specifically New York Labor Law §652.
46. Defendants also failed to pay Plaintiff the required minimum wage, the minimum wage rate to which Plaintiff was entitled under New York Labor Law §652, in violation of 12 N. Y. C. R. R. 137-1.3.
47. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, his unpaid minimum wages and an amount equal to one-quarter of his unpaid minimum wages in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including interest in accordance with NY Labor Law §198 (1-a).

**THIRD CAUSE OF ACTION**

**Overtime Wages Under The Fair Labor Standards Act**

48. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
49. Plaintiff has consented in writing to be a party to this action, pursuant to 29 U.S.C. §216 (b).
50. At all times relevant to this action, Plaintiff was engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §§206(a) and 207(a).
51. At all times relevant to this action, Defendants were employers engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §§206 (a) and 207(a).
52. Defendants willfully failed to pay Plaintiff overtime wages for hours worked in excess of forty (40) hours per week at a wage rate of one and a half (1.5) times the minimum wage, to which Plaintiff was entitled under 29 U.S.C. §§206(a) in violation of 29 U.S.C. §207(a)(1).
53. Defendants' violations of the FLSA as described in this Complaint have been willful and intentional. Defendants have not made a good effort to comply with the FLSA with respect to their compensation of Plaintiffs.
54. Due to Defendants' FLSA violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, his unpaid wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys fees and costs of the action, including interest, pursuant to the FLSA, specifically 29 U.S.C. §216 (b).

**FOURTH CAUSE OF ACTION**

**Overtime Wages Under New York Labor Law**

55. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
56. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§2 and 651.

57. Defendants failed to pay Plaintiff overtime wages for hours worked in excess of forty hours per week at a wage rate of one and a half (1.5) times the minimum wage, the minimum wage rate to which Plaintiff was entitled under New York Labor Law §652, in violation of 12 N.Y.C.R.R. 137-1.3.

58. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, his unpaid overtime wages and an amount equal to one-quarter of his unpaid overtime wages in the form of liquidated damages, as well as reasonable attorneys' fees and costs of the action, including interest in accordance with NY Labor Law §198 (1-a).

#### **FIFTH CAUSE OF ACTION**

##### **Spread of Hours Compensation Under New York Labor Law**

59. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

60. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff an additional hour of pay at minimum wage for each day worked more than ten (10) hours, in violation of the New York Minimum Wage Act and its implementing regulations. N.Y. Labor Law §§ 650 et seq.; 12 N.Y. C. R. R. § 142-2.4

61. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid spread of hour compensation, reasonable attorneys' fees, and costs of the action, pursuant to N. Y. Labor Law § 663 (1).

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests that judgment be granted:

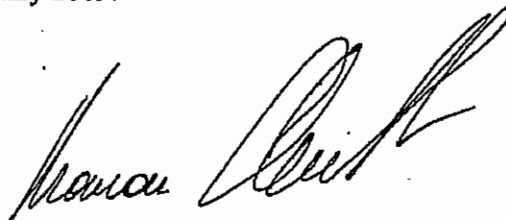
- a. Declaring Defendants' conduct complained herein to be in violation of the Plaintiff's rights under the FLSA, New York Minimum Wage Act, and the New York Labor Law and its regulations;
- b. Awarding Plaintiff unpaid minimum wages, overtime wages and spread of hours;

- c. Awarding Plaintiff liquidated damages pursuant to 29 U.S.C. §216 and New York Labor Law §§198(1-a), 663(1);
- d. Awarding Plaintiff prejudgment and post-judgment interest;
- e. Awarding Plaintiff the costs of this action together with reasonable attorney's fees; and
- f. Awarding such and further relief as this court deems necessary and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: This 06<sup>th</sup> day of February 2009.



Roman Avshalumov (RA 5508)  
Helen F. Dalton & Associates, PC  
69-12 Austin Street  
Forest Hills, NY 11375  
Telephone: 718-263-9591  
Fax: 718-263-9598

# EXHIBIT 4

MARK J. WEINSTEIN, ESQ. (MW1896)  
COTTO & ASSOCIATES  
70 SPRING STREET  
OSSINING, NEW YORK 10562  
(914) 941-4077  
ATTORNEYS FOR MILLBANK REAL ESTATE AND FRIEDA RODRIGUEZ

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PEDRO CANELA-RODRIGUEZ, on his own behalf  
and on the behalf of others similarly situated

**Index No.: 09 Civ. 6588**

Plaintiff,

v.

**DEFENDANT'S ANSWER  
WITH AFFIRMATIVE  
DEFENSES**

MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ  
and individual,

Defendants.  
-----X

Defendant MILBANK REAL ESTATE and FRIEDA RODRIGUEZ (collectively "the defendants"), by its attorney, Mark J. Weinstein, Esq., COTTO & ASSOCIATES, for its answer to the Complaint of PEDRO CANELA-RODRIGUEZ herein, alleges as follows:

1. Admits upon information and belief the truth of the allegations contained in paragraph 1 of the Complaint.

**PRELIMINARY STATEMENT**

2. Admits that the allegations contained in paragraph 2 of the Complaint purport to predicate the claims in this action under federal and state minimum wage and

overtime laws, but except as so admitted, denies the allegations contained in Paragraph 2 of the Complaint.

3. Denies the allegations contained in paragraph 3 of the Complaint.
4. Admits the allegations contained in paragraph 4 of the Complaint that plaintiff seeks compensatory and liquidated damages under Federal and New York State labor laws in the amount exceeding \$100,000.00, but except as so admitted denies the allegations in paragraph 4 of the Complaint.

#### **JURISDICTION AND VENUE**

5. Admits that the allegations contained in paragraph 5 of the Complaint purport to predicate jurisdiction for plaintiff's federal claims pursuant to the FLSA, 29 U.S.C. Section 216 and 28 U.S.C. Section 1331.
6. Admits that the allegations contained in paragraph 6 of the Complaint purport to predicate jurisdiction for plaintiff's state law claims pursuant to 28 U.S.C. Section 1367.
7. Admits that the allegations contained in paragraph 7 of the Complaint purport to predicate venue in this Court under 28 U.S.C. Section 1391(c).
8. Admits that the allegations contained in paragraph 8 of the Complaint, that the Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. Sections 2201 and 2202.

#### **THE PARTIES**

9. Admits the allegations contained in paragraph 9 of the Complaint that plaintiff lived at the referenced address, but except as so admitted, denies the allegations contained in paragraph 9 of the Complaint.
10. Admits the allegations contained in paragraph 10 of the Complaint but except as so admitted, denies the allegations contained in paragraph 10 of the Complaint that Millbank Real Estate is the defendant.
11. Admits upon information and belief the truth of the allegations contained in paragraph 11 of the Complaint.
12. Admits upon information and belief the truth of the allegations contained in paragraph 12 of the Complaint.
13. Admits upon information and belief the truth of the allegations contained in paragraph 13 of the Complaint.
14. Admits upon information and belief the truth of the allegations contained in paragraph 14 of the Complaint.
15. Admits upon information and belief the truth of the allegations contained in paragraph 15 of the Complaint.
16. Admits upon information and belief the truth of the allegations contained in paragraph 16 of the Complaint.
17. Admits upon information and belief the truth of the allegations contained in paragraph 17 of the Complaint.
18. Admits upon information and belief the truth of the allegations contained in paragraph 18 of the Complaint.

19. Denies the allegations contained in paragraph 19 of the Complaint.

20. Admits upon information and belief the truth of the allegations contained in paragraph 20 of the Complaint.

**STATEMENT OF FACTS**

21. Denies the allegations contained in paragraph 21 of the Complaint.

22. Admits the allegations contained in paragraph 22 of the Complaint that plaintiff installed kitchens, bathrooms, and floors, but except as so admitted, denies the allegations contained in paragraph 22 of the Complaint.

23. Denies the allegations contained in paragraph 23 of the Complaint.

24. Admits the allegations contained in paragraph 24 of the Complaint that plaintiff installed kitchens, bathrooms, and floors, but except as so admitted, denies the allegations contained in paragraph 24 of the Complaint.

25. Denies the allegations contained in paragraph 25 of the Complaint.

26. Denies the allegations contained in paragraph 26 of the Complaint.

27. Admits the allegations contained in paragraph 27 of the Complaint that Federal and New York State law require overtime wages at a wage rate of one and half times the regular rate, but except as so admitted, denies the allegations contained in paragraph 27 that defendants are required to pay plaintiff overtime wages.

28. Denies the allegations contained in paragraph 28 of the Complaint.

29. Denies the allegations contained in paragraph 29 of the Complaint.

30. Admits the allegations contained in paragraph 30 of the Complaint that FLSA 29 U.S.C. Section 206 that requires defendants to pay employees minimum wage.

31. Admits the allegations contained in paragraph 31 of the Complaint that New York State Labor Law requires defendants to pay employees minimum wage.

32. Denies the allegations contained in paragraph 32 of the Complaint.

33. Denies the allegations contained in paragraph 33 of the Complaint.

34. Denies the allegations contained in paragraph 34 of the Complaint.

**FIRST CAUSE OF ACTION**  
**(Minimum Wages Under The Fair Labor Standards Act)**

35. Repeats, realleges and incorporates by reference each and every response to the allegations contained in paragraphs 1 through 34 of the Complaint, in response to paragraph 35, as if fully set forth herein.

36. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Denies the allegations contained in paragraph 39 of the Complaint.

40. Denies the allegations contained in paragraph 40 of the Complaint.

41. Denies the allegations contained in paragraph 41 of the Complaint.

**SECOND CAUSE OF ACTION**  
**(Minimum Wages Under New York State Labor Law)**

- 42. Repeats, realleges and incorporates by reference each and every response to the allegations contained in paragraphs 1 through 41 of the Complaint, in response to paragraph 42, as if fully set forth herein.
- 43. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.
- 44. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint.
- 45. Denies the allegations contained in paragraph 45 of the Complaint.
- 46. Denies the allegations contained in paragraph 46 of the Complaint.
- 47. Denies the allegations contained in paragraph 47 of the Complaint.

**THIRD CAUSE OF ACTION**  
**(Overtime Wages Under The Fair Labor Standards Act)**

- 48. Repeats, realleges and incorporates by reference each and every response to the allegations contained in paragraphs 1 through 47 of the Complaint, in response to paragraph 48, as if fully set forth herein.
- 49. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.
- 50. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.
- 51. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.
- 52. Denies the allegations contained in paragraph 52 of the Complaint.
- 53. Denies the allegations contained in paragraph 53 of the Complaint.

54. Denies the allegations contained in paragraph 54 of the Complaint.

**FOURTH CAUSE OF ACTION**  
**(Overtime Wages Under New York Labor Law)**

55. Repeats, realleges and incorporates by reference each and every response to the allegations contained in paragraphs 1 through 54 of the Complaint, in response to paragraph 55, as if fully set forth herein.

56. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. Denies the allegations contained in paragraph 57 of the Complaint.

58. Denies the allegations contained in paragraph 58 of the Complaint.

**FIFTH CAUSE OF ACTION**  
**(Spread of Hours Compensation Under New York Labor Law)**

59. Repeats, realleges and incorporates by reference each and every response to the allegations contained in paragraphs 1 through 58 of the Complaint, in response to paragraph 59, as if fully set forth herein.

60. Denies the allegations contained in paragraph 60 of the Complaint.

61. Denies the allegations contained in paragraph 61 of the Complaint.

**DEMAND FOR RELIEF**

The “WHEREFORE” paragraphs which immediately follow paragraph 61 of the Complaint state a demand for relief to which no responsive pleading is required but, should a response be required, defendants deny that the plaintiff is entitled to any relief.

**THE FIRST AFFIRMATIVE DEFENSE**

The defendant has acted at all times in good faith compliance with the Fair Labor Standards Act and New York State labor laws.

**THE SECOND AFFIRMATIVE DEFENSE**

The overtime and minimum wage provisions of the Fair Labor Standards Act and the New York State labor law do not apply because plaintiff was paid more than minimum wage, worked only a forty (40) hour work week, and did not work overtime.

**THE THIRD AFFIRMATIVE DEFENSE**

Plaintiff is exempt from the requirements of the Fair Labor Standards Act and the New York State labor law in that plaintiff was a salaried employee, supervised employees, and acted in a managerial capacity.

**THE FOURTH AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**THE FIFTH AFFIRMATIVE DEFENSE**

The claims are barred, in whole or in part, by the principles of waiver and/or estoppel.

**THE SIXTH AFFIRMATIVE DEFENSE**

The plaintiff, by gross negligence and/or acts of omissions have identified and named the wrong parties in this action, as plaintiff did not work for defendants.

WHEREFORE, defendants deny that plaintiff is entitled to any relief and requests that this case be dismissed and it be awarded its costs and attorneys fees.

Dated: October 19, 2009  
Ossining, New York

Respectfully submitted,

DEFENDANTS

By: Mark J. Weinstein by *DWC*  
Mark J. Weinstein, Esq. (MW1896)  
COTTO & ASSOCIATES  
70 Spring Street  
Ossining, New York 10562  
(914) 941-4077

To: Helen F. Dalton & Associates, PC  
Roman Avshalumov (RA5508)  
69-12 Austin Street  
Forest Hills, NY 11375  
(718) 263-9591

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**PEDRO CANELA-RODRIGUEZ,**

**Plaintiff,**

**DEFENDANTS RULE 56.1  
STATEMENT OF MATERIAL  
FACTS**

**- against -**

**INDEX NO. 09 CIV6588 (JSR)**

**MILBANK REAL ESTATE, and FRIEDA  
RODRIGUEZ,**

**Defendants.**  
-----X

**DEFENDANTS' RULE 56.1 STATEMENT**

Defendants, by and through their attorneys, Cotto & Associates, submits the following statement of material facts of which there is no genuine issue to be tried pursuant to Rule 56.1 of the Local Rules of the Southern and Eastern Districts of New York in support of Defendants' Motion for Summary Judgment.

1. Plaintiff worked for defendant Milbank starting on or about November 8, 2007. (Radparvar Aff, Paragraph 3) (Plaintiff Dep. 19:22-23.).
2. Plaintiff was hired as an employee at-will by Defendant Milbank. (Radparvar Aff. Paragraph 10 & Exhibit D) (Plaintiff Dep. 55:24-25; 56:1-5.).
3. Plaintiff was hired as a building superintendant. (Radparvar Aff. Paragraph 4) (Plaintiff Dep. 23:7.).
4. Defendants' building was residential. (Radparvar Aff. Paragraph 3).

5. Plaintiff was paid a salary of \$500.00 per week, which averaged \$12.50 per hour, more than minimum wage. (Radparvar Aff. Paragraph 7 & Exhibit B).

6. Plaintiff was required to work a “normal” job, five days a week, starting at 8:00 a.m. in the morning to 4:00 p.m. (Radparvar Aff. Paragraph 7 & Exhibit C) (Plaintiff Dep. 24:15-19; 49:21-25.).

7. Plaintiff signed timesheets indicating that he worked five (5) days a week, with weekends and holidays off. (Radparvar Aff. Paragraph 9 & Exhibit C).

8. Plaintiff received a salary. (Radparvar Aff. Paragraph 7 & Exhibit B) (Plaintiff Dep. 23:13-17.).

9. Plaintiff was responsible for two (2) of defendant Milbank’s buildings: 2770 and 2780 Kingsbridge Terrace in the Bronx, New York. (Radparvar Aff. Paragraph 4) (Plaintiff Dep. 27:10-18).

10. Plaintiff lived for a year at 2770 Kingsbridge rent free. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:10-12).

11. Plaintiff was not required to pay electricity on the rent-free apartment and had a company phone free of charge. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:23).

12. Plaintiff lived in a two-bedroom apartment with an estimated rental value of one thousand dollars (\$1000.00) per month. (Radparvar Aff. Paragraph 8).

13. The value of the electricity and the phone was an estimated fifty (\$50.00) per month, for each month respectively. (Radparvar Aff. Paragraph 8).

14. As part of plaintiff’s duties as a superintendant, he supervised at least two (2) porters. (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 28:11-13; 29:18.).

15. Plaintiff made sure the porters finished their job requirements. (Plaintiff Dep. 28:14-16.).

16. Plaintiff reported to management the performance of the porters and made recommendations as to their status as employees of Defendant. (Radparvar Aff. Paragraph 5).

17. Plaintiff interfaced with Defendants' property manager, reporting on personnel and building matters, and interacted with tenants. (Radparvar Aff. Paragraph 5 and Exhibit A).

18. Plaintiff met with independent contractors that were hired to perform services at the Defendants' buildings, directing them to perform work. (Radparvar Aff. Paragraph 6).

19. Plaintiff maintained his own office whereby he kept records and work orders. (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 33:13-16).

20. Plaintiff could not recollect and did not count the hours or the time that he purportedly worked overtime for Defendants. (Plaintiff Dep. 43:9-12; 43:16-17.).

21. Plaintiff could not articulate when he started working the 105 hours a week that he alleged in his complaint. (Plaintiff Dep. 44:15-20.).

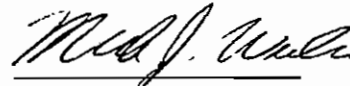
22. Plaintiff never wrote down the hours, kept records, or provided proof of his overtime to Defendants. (Plaintiff Dep. 45:10-16; 47:7-17; 50:2-7.).

23. Plaintiff committed a series of disciplinary infractions, for which he admitted through his signature. (Radparvar Aff. Paragraph 11 & Exhibit E) (Plaintiff Dep. 60:21-23; 61:9-11).

24. These infractions included lack of communication with managers, including not answering the company cell phone, failure to follow directives, insubordination, threats of violence towards managers, foul language towards managers and tenants, and threatening tenants to have his wife come over to their apartment and “beat them up.” (Radparvar Aff. Paragraph 12 & Exhibit E).

25. Plaintiff was terminated on January 2, 2009. (Radparvar Aff. Paragraph 13 & Exhibit F) (Plaintiff Dep. 62:1-3).

Dated: Ossining, New York  
February 15, 2010

  
Mark J. Weinstein

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**CASE NO. 09 CIV 6588**

---

**PEDRO CANELA-RODRIGUEZ, Plaintiff**

**-against-**

**MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ, Defendants**

---

**DEFENDANTS' RULE 56.1 STATEMENT OF MATERIAL FACTS**

---

Cotto & Associates  
70 Spring Street  
Ossining, New York 10562  
Phone (914) 941-4077  
Fax (914) 941-4082

**Attorneys for Defendants**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**PEDRO CANELA-RODRIGUEZ,**

**Plaintiff,**

**ECF CASE**

**- against -**

**INDEX NO. 09 CIV6588 (JSR)**

**MILBANK REAL ESTATE, and FRIEDA  
RODRIGUEZ,**

**Defendants.**  
-----X

**DEFENDANTS' MEMORANDUM OF LAW IN  
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

**COTTO & ASSOCIATES**

*Attorneys For Defendants*

By: 

\_\_\_\_\_  
Mark J. Weinstein (MW1896)  
70 Spring Street  
Ossining, New York 10562  
(914) 941-4077

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**PEDRO CANELA-RODRIGUEZ,**

**Plaintiff,**

**ECF CASE**

**- against -**

**INDEX NO. 09 CIV6588 (JSR)**

**MILBANK REAL ESTATE, and FRIEDA  
RODRIGUEZ,**

**Defendants.**

-----X

**DEFENDANTS' MEMORADUM OF LAW IN SUPPORT  
OF ITS MOTION FOR SUMMARY JUDGMENT**

Preliminary Statement

Plaintiff was employed by the Defendant Milbank Real Estate from approximately November 8, 2007 until his termination for cause on January 2, 2009. Plaintiff did not establish that he worked more than forty (40) hours a week to qualify for overtime, that he was not paid minimum wage under both the Fair Labor Standards Act (FLSA) and the New York State (NYS) Labor Law, and that Defendant did not violate spread of hours compensation regulations pursuant to NYS Labor Law. In addition, even were the Plaintiff to establish that he worked more than 40 hours per week, the Plaintiff was exempt under the overtime provisions of the FLSA and the NYS Labor Law under the executive exemption. Accordingly, this case should be dismissed in its entirety.

### STATEMENT OF FACTS<sup>1</sup>

Plaintiff was hired by the Defendant Milbank starting on or about November 8, 2007. (Radparvar Aff, Paragraph 3) (Plaintiff Dep. 19:22-23.) He was hired as an employee at-will. (Radparvar Aff. Paragraph 10 & Exhibit D) (Plaintiff Dep. 55:24-25; 56:1-5.). Plaintiff was hired as a building superintendant for two (2) buildings located at 2770 and 2780 Kingsbridge Terrace in the Bronx, New York. (Radparvar Aff. Paragraph 4) (Plaintiff Dep. 27:10-18). The building was residential. (Radparvar Aff. Paragraph 3).

Plaintiff was paid a salary of \$500.00 per week, which averaged \$12.50 per hour, based on a forty (40) hour workweek, more than the minimum wage. (Radparvar Aff. Paragraph 7 & Exhibit B). Plaintiff admitted when he was hired that he was paid a salary. (Plaintiff Dep. 23:13-17.). He was required to work a “normal” job, five days a week, starting at 8:00 a.m. in the morning to 4:00 p.m. in the afternoon. (Radparvar Aff. Paragraph 7 & Exhibit C) (Plaintiff Dep. 24:15-19; 49:21-25.). Plaintiff signed timesheets indicating that he worked five (5) days a week, with weekends and holidays off. (Radparvar Aff. Paragraph 9 & Exhibit C).

In addition, Plaintiff lived for a year at 2770 Kingsbridge rent free. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:10-12). He was not required to pay electricity on the rent-free apartment. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:23). The estimated value of the apartment was \$1,000 per month and the electricity was \$50 per month. (Radparvar Aff. Paragraph 8). Plaintiff was given a company phone free of charge, with an estimated value of \$50 per month. (Radparvar Aff. Paragraph 8).

---

<sup>1</sup> For a statement of the material facts, The Court is respectfully referred to Defendants’ 56.1 Statement in Support of its Motion for Summary Judgment.

As part of Plaintiff's duties as a superintendent, he supervised porters, of which there were at least two (2). (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 28:11-13; 29:18.). He made sure the porters finished their job requirements. (Plaintiff Dep. 28:14-16.). He reported to management the performance of the porters and made recommendations as to their status as employees of Defendants. (Radparvar Aff. Paragraph 5). Plaintiff routinely interfaced with Defendants' property manager, reporting on personnel and building matters, and engaged with tenants. (Radparvar Aff. Paragraph 5 and Exhibit A). In fact, he maintained his own office whereby he kept records and work orders. (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 33:13-16). And, Plaintiff met with independent contractors that were hired to perform services at the Defendants' buildings, directing them to perform work. (Radparvar Aff. Paragraph 6).

Plaintiff could not recollect and did not count the hours or the time that he purportedly worked overtime for the Defendants. (Plaintiff Dep. 43:9-12; 43:16-17.). He could not articulate when he started working the 105 hours a week that he alleged in his complaint. (Plaintiff Dep. 44:15-20.). Plaintiff never wrote down the hours, kept records, or provided proof of his overtime to the Defendants. (Plaintiff Dep. 45:10-16; 47:7-17; 50:2-7.).

Plaintiff committed a series of disciplinary infractions, for which he admitted through his signature. (Radparvar Aff. Paragraph 11 & Exhibit E) (Plaintiff Dep. 60:21-23; 61:9-11). These infractions included lack of communication with managers, including not answering the company cell phone, failure to follow directives, insubordination, threats of violence towards managers, foul language towards managers and tenants, and threatening tenants to have his wife come over to their apartment and "beat them up."

(Radparvar Aff. Paragraph 12 & Exhibit E). The defendants terminated Plaintiff on January 2, 2009. (Radparvar Aff. Paragraph 13 & Exhibit F) (Plaintiff Dep. 62:1-3).

## **ARGUMENT**

### **DEFENDANTS DID NOT VIOLATE THE FAIR LABOR STANDARDS ACT (FLSA) & NYS LABOR LAW**

#### **A. Standard of Review**

Summary judgment must be granted where the “pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of material fact and that the movant is entitled to a judgment as a matter of law. *Fed. R. Civ. P. 56(c)*. Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The party moving for summary judgment bears the initial burden of setting out the basis for its motion and identifying those portions of the record that “demonstrate the absence of a genuine issue of material fact.” *Id.* At 323. The burden then shifts to the nonmovant to produce evidence sufficient to create a genuine issue of material fact for trial. *Fed. R. Civ. P. 56(e)(2)*; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

#### **B. Defendants did not violate the overtime provisions of the FLSA & NYS Labor Law**

- 1. Plaintiff did not make a prima facie case that he worked more than 40 hours per week**

The FLSA provides that "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). According to the Supreme Court in *Anderson v. Mt. Clemens Pottery Co.*, 328 US 680, 687 (1946) "an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." Courts have applied the *Anderson* standard to analyze claims under both FLSA and NYS Labor Law. See *Masco v. E & L Transp., Inc.* 387 F. Supp. 2d 87, 93-94 (S.D.N.Y. 2005).

In the present case, Plaintiff produced insufficient evidence that he worked overtime and could not even meet his initial burden. Plaintiff could not recollect and did not count the hours or the time that he purportedly worked overtime for the Defendants. (Plaintiff Dep. 43:9-12; 43:16-17.). See *Doo Nam Yang v. ACBL Corp.*, 427 F. Supp. 2d 327, 335 (S.D.N.Y. 2005) (To meet Plaintiff's burden, the Plaintiff should not "speculate"). He could not articulate when he started working the 105 hours a week that he alleged in his complaint. (Plaintiff Dep. 44:15-20.). And, Plaintiff never wrote down the hours, kept records, or provided proof of his overtime Defendants. (Plaintiff Dep. 45:10-16; 47:7-17; 50:2-7.).

Even were Plaintiff able to meet his initial burden, Defendant presented sufficient evidence that Plaintiff did not work overtime. Plaintiff signed timesheets indicating that he worked five (5) days a week, with weekends and holidays off. (Radparvar Aff. Paragraph 9 & Exhibit C). Additionally, Plaintiff testified he was required to work a “normal” job, five days a week, starting at 8:00 a.m. in the morning to 4:00 p.m. in the afternoon. (Plaintiff Dep. 24:15-19; 49:21-25.).

**2. Plaintiff was exempt from the provisions of the FLSA because**

**Plaintiff was a “bona fide executive”**

Employers are exempt from the overtime requirement if the employee is “employed in a bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a)(1). To qualify as an executive, the employee must be compensated on a salary basis at a rate not less than \$455 per week. 29 C.F.R. § 541.1. The employee’s primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent and the employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight. In addition, the employee must customarily and regularly exercise discretionary power. 29 C.F.R. § 541.1(a)-(e). *See also* 12 NYCRR § 142-2.14 (For purposes of exemptions from overtime provisions, New York State defines employee “exceptions” as opposed to “exemption” under the FLSA and follows an identical criteria to the FLSA in determining if an employee is employed as a “bona fide executive”).

Plaintiff was an executive under the FLSA and NYS Labor Law. Plaintiff maintained his own office whereby he kept records and work orders. (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 33:13-16). As part of his duties as a superintendent, he supervised at least two (2) porters. (Radparvar Aff. Paragraph 5) (Plaintiff Dep. 28:11-13; 29:18.). This included making sure porters finished their job requirements. (Plaintiff Dep. 28:14-16.). He reported to management the performance of the porters and made recommendations as to their status as employees of Defendant. (Radparvar Aff. Paragraph 5). And, Plaintiff routinely interfaced with Defendant's property manager, reporting on personnel and building matters, and interacted with tenants. (Radparvar Aff. Paragraph 5 and Exhibit A). He also met with independent contractors that were hired to perform services at the Defendant's buildings, directing them to perform work. (Radparvar Aff. Paragraph 6). Plaintiff was paid a salary of \$500.00 per week. (Radparvar Aff. Paragraph 7 & Exhibit B). In fact, Plaintiff admitted when he was hired that he was paid a salary. (Plaintiff Dep. 23:13-17.).

**C. Plaintiff was paid minimum wage**

Pursuant to the FLSA 29 U.S.C. § 206 the defendants were required to pay the Plaintiff of a minimum wage of \$5.15 an hour. Pursuant to the New York Minimum Wage Act, New York Labor Law § 652 the defendants were required to pay Plaintiff minimum wages of \$7.15 an hour.

It is clear from the documentary evidence that Plaintiff was paid at least minimum wage. In addition, Plaintiff offered no proof that he was not. Plaintiff was paid a salary of \$500.00 per week, which averaged \$12.50 per hour, more than the minimum wage. (Radparvar Aff. Paragraph 7 & Exhibit B). He was required to work a "normal"

job, five days a week, starting at 8:00 a.m. in the morning to 4:00 p.m. in the afternoon. (Radparvar Aff. Paragraph 7 & Exhibit C) (Plaintiff Dep. 24:15-19; 49:21-25.). Plaintiff signed timesheets indicating that he worked five (5) days a week, with weekends and holidays off. (Radparvar Aff. Paragraph 9 & Exhibit C).

Additionally, Plaintiff received a significant value by living rent-free in his apartment for at least one (1) year. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:10-12). This value was estimated at \$1,000 per month, a value in itself above the minimum wage. (Radparvar Aff. Paragraph 8). See Section 3(m) of the FLSA, 29 U.S.C. 203(m), which allows employers to include the reasonable costs of meals, lodging, or other facilities in employee wages for purposes of FLSA. In the present case, Defendants, did not include the "reasonable costs" of Plaintiff's apartment in calculating his wages. Rather, the Plaintiff was simply permitted to live in his apartment rent-free and collect a salary above the minimum wage.

Plaintiff was not required to pay electricity on the rent-free apartment, a value estimated at \$50 per month. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:23). Lastly, Plaintiff was given a company phone with an estimated value of \$50 per month. (Radparvar Aff. Paragraph 8). Accordingly, Plaintiff's unpaid compensation, together with his salary, demonstrated that Plaintiff was paid more than minimum wage under both federal and state law.

**D. Defendants did not violate the spread of hours compensation provisions under New York Labor Law**

The "spread of hours" requirement is contained in a New York State regulation, 12 NYCRR § 142-2.4. It provides "an employee shall receive one hour's pay at the basic

minimum hourly wage rate, in addition to the minimum wage required . . . in any day in which: (a) the spread of hours exceeds 10 hours; or (b) there is a split shift; or (c) both situations occur." Id. "Spread of hours" is defined as the interval between the beginning and end of an employee's workday, and includes working time, plus time off for meals, plus intervals of off-duty time. (12 NYCRR § 142-2.18). Provided an employee's weekly wages exceed the total minimum wage, the employee will not be entitled to "spread of hours" pay. See *Chan v. Triple 8 Palace, Inc.*, No. 03 Civ. 6048(GEL), 2006 WL 851749 and *Busgith v. Hudson News Co.*, 2008 NY Slip Op 31069(U) (N.Y. Sup. Ct. 4/8/2008), 2008 NY Slip Op 31069 (N.Y. Sup. Ct., 2008) (if an employee's total weekly compensation is equal to or greater than the total minimum wages due the employee for that workweek, including compensation for an additional hour for each day in which the "spread of hours" exceeds ten (10) hours, no additional payments are due the employee because the employee earns sufficiently more than the statutory minimum wage).

Again, it is clear from the documentary evidence that Plaintiff's weekly compensation was already sufficiently above the minimum rate. In addition, Plaintiff offered no proof that he was not. Plaintiff was paid a salary of \$500.00 per week, which averaged \$12.50 per hour, more than the minimum wage. (Radparvar Aff. Paragraph 7 & Exhibit B). He was required to work a "normal" job, five days a week, starting at 8:00 a.m. in the morning to 4:00 p.m. in the afternoon. (Radparvar Aff. Paragraph 7 & Exhibit C) (Plaintiff Dep. 24:15-19; 49:21-25.). Plaintiff signed timesheets indicating that he worked five (5) days a week, with weekends and holidays off. (Radparvar Aff. Paragraph 9 & Exhibit C).

And Plaintiff accrued other values during his employment for Defendants. Plaintiff received a significant value by living rent-free in his apartment for at least one (1) year. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:10-12). This value was estimated at \$1,000 per month. In addition, he was not required to pay electricity on the rent-free apartment, a value estimated at \$50 per month. (Radparvar Aff. Paragraph 8) (Plaintiff Dep. 34:23). Lastly, Plaintiff was given a company phone with an estimated value of \$50 per month. (Radparvar Aff. Paragraph 8).

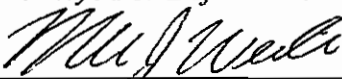
Therefore, because Plaintiff's total weekly compensation was already sufficiently above the minimum wage, without even including other benefits he accrued as a Superintendant, he is not entitled to additional compensation under the spread of hours provisions.

### CONCLUSION

For the foregoing reasons, the Court should Defendants motion for summary judgment together with such other and further relief as the Court deems just and proper.

Dated: Ossining, NY  
February 15, 2010

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**CASE NO. 09 CIV 6588**

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**PEDRO CANELA-RODRIGUEZ, Plaintiff**

**-against-**

**MILBANK REAL ESTATE, and FRIEDA RODRIGUEZ, Defendants**

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**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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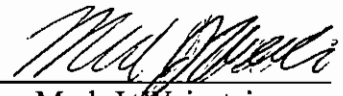
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of February 2010, true and correct copies of the foregoing Defendants' Motion for Summary Judgment was filed electronically pursuant to ECF and a courtesy, hard- copy was served via Priority Mail at a US Post Office to the following address:

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